TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

ANDJA KOLOVRAT, ET AL., PETITIONERS,

vs.

OREGON.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF OREGON

PETITION FOR CERTIORARI FILED MAY 26, 1960
CERTIORARI GRANTED OCTOBER 10, 1960

SUPREME COURT OF THE UNITED STATES

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., DECEMBER 8, 1960

[fol. 1] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH

Department of Probate

No. 71287

In the Matter of the Estate of
JOE STOICH, Deceased.

PETITION OF THE STATE OF OREGON FOR FINDING AND ORDER OF ESCHEAT—Filed April 30, 1954

The State of Oregon, acting by and through the State Land Board, respectfully represents to this honorable court:

I.

That it appears from the records and files in the proceedings in this estate that Joe Stoich died intestate on December 6, 1953, in Multnomah County, Oregon, leaving property located in this state.

II.

That your petitioner is informed and believes and therefore alleges that Joe Stoich died survived only by two brothers, Ivan Stoic and Mile Stoic, who are residents and inhabitants of Yugoslavia.

III.

That your petitioner is informed and believes and therefore alleges that reciprocal rights of inheritance as prescribed by ORS 111.070 did not as of the date of the decedent's death, and do not now, exist between the United States and Yugoslavia, and that under the provisions of ORS 111.070 the said Ivan Stoic and Mile Stoic are not entitled to take or receive the proceeds of this estate.

IV.

That your petitioner is informed and believes and therefore alleges that there are no other heirs, legatees or devisees of said decedent legally entitled to take or receive the proceeds of this estate and that the same escheated to the State of Oregon under the provisions of ORS 111.070, 120.010 and 120.030.

[fol. 2] Wherefore, your petitioner prays for an order as follows:

1. That Joe Stoich died on December 6, 1953, in Multnomah County, Oregon, leaving property in this state, without heirs, legatees or devisees legally entitled to take or receive the proceeds of his estate.

2. That the clear proceeds of the estate escheated to and became the property of the State of Oregon on the date of the death of the said decedent.

3. That the executor of said estate deliver the clear proceeds of this estate to the State Land Board of the State of Oregon for payment into the common school fund.

Robert Y. Thornton, Attorney General, Catherine Zorn, Assistant Attorney General, Attorneys for Petitioner.

Duly sworn to by E. T. Pierce, jurat omitted in printing.

[fol. 3]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

DEPARTMENT OF PROBATE

No. 71 287

In the Matter of the Estate of
JOE STOICH, Deceased.

ANSWER OF HEIRS TO PETITION OF THE STATE OF OREGON FOR FINDING AND ORDER OF ESCHEAT—Filed July 16, 1954

Come now Drago Stojic, Dragica Sunjic, Neda Turk, Josip Buljan, Jure Zivanovic, Mara Tolic, Milan Stojic, and Andja Kolovrat, by Branko Karadjole, Consul General of Yugoslavia at San Francisco, California, their consular representative and attorney in fact, by Peter A. Schwabe, of Haas & Schwabe, their and his attorneys, and for their answer to the Petition of the State of Oregon for Finding and Order of Escheat, filed herein, admit, deny and allege as follows:

I.

Admit Paragraph I of said petition.

II.

Deny Paragraph II of said petition, but allege that they are all of the next of kin and heirs at law of the said Joe Stoich, deceased, their ages, relationships and shares of inheritance being as follows:

Drago Stojic, age 49, nephew,
Dragica Sunjic, age 47, niece,
Neda Turk, age 41, niece,
(each entitled to 1/15th)

being all of the children and issue of Mijo Stojic, a predeceased brother,

Josip Buljan, age 55, nephew,
(entitled to 1/5th)

being the only child and issue of Joka Buljan, a predeceased sister,

Jure Zivanovic, age 53, a nephew,
(entitled to 1/5th)

being the only child and issue of Matija Zivanovic, a predeceased sister,

Mara Tolic, age 40, niece,
Milan Stojic, age 31, nephew,
(each entitled to 1/10th)

being all of the children and issue of Ivan Stojic, a predeceased brother,

Andja Kolovrat, age 62, a sister,
(entitled to 1/5th)

[fol. 4] all residing at Prosolac, District of Imotski, Republic of Croatia, Yugoslavia, and being residents and inhabitants of Yugoslavia.

III.

Deny Paragraph III of said petition, but allege that in fact and in law reciprocal rights of inheritance as prescribed by ORS 111.070 did exist as of the date of the decedent's death and do now exist between the United States and Yugoslavia, and that under the provisions of ORS 111.070 these answering next of kin and heirs at-law of the said Joe Stoich, deceased, are entitled to take and to receive the proceeds of this estate in the manner and shares as in Paragraph II above set forth.

IV.

Answering Paragraph IV of said petition, these answering heirs at law have no knowledge or information sufficient to form a belief as to the truth and falsity of the allegations that there are no other heirs, legatees, or devisees of said decedent legally entitled to take or receive the proceeds of this estate and therefore deny the same and also deny that the proceeds of this estate escheated to the State of Oregon under the provisions of ORS 111.070, 120.010, and 120.030.

Wherefore, these answering heirs at law of Joe Stoich, deceased, pray that the Petition of the State of Oregon for Finding and Order of Escheat be denied and dismissed and that this Court make and enter its order that the clear proceeds of this estate be distributed to these answering next of kin and heirs at law of the said Joe Stoich, deceased, as in Paragraph II above set forth.

Haas & Schwabe, Attorneys for Heirs.

Duly sworn to by Peter A. Schwabe, jurat omitted in printing.

[fol. 5] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

DEPARTMENT OF PROBATE

No. 71 702

In the Matter of the Estate of MUNAREM ZEKICH, also known as M. ZEKICH, and also known as MUHO ZEKJCA, Deceased.

PETITION FOR FINDING AND ORDER OF ESCHEAT—
Filed August 9, 1954

Comes now the State of Oregon, acting by and through the State Land Board, and alleges as follows:

I.

That it appears from the records and files in this proceeding that Munarem Zekich, also known as M. Zekich and Muho Zekica, died intestate on or about December 17, 1953, in Multnomah County, Oregon, leaving certain personal property in this state as is more fully shown by the inventory and records on file herein.

II.

That your petitioner is informed and believes and therefore alleges that certain persons residing in Yugoslavia claim to be heirs at law and next of kin of said deceased.

III.

That your petitioner is informed and believes and therefore alleges that there are no legal heirs of said deceased residing in any of the United States of America or its territories.

IV.

That under the provisions of ORS 111.070 the right of aliens not residing in the United States or its territories

to take either real or personal property or the proceeds thereof in this state, by succession or testamentary disposition, depends upon proof by such non-resident aliens of [fol. 6] the existence of such reciprocal rights as are set forth in said section 111.070.

V.

That pursuant to the provisions of ORS 111.070 and related statutes the estate of the said Munarem Zekich situated in this state has escheated to the State of Oregon.

Wherefore, your petitioner prays for an order:

1. That Munarem Zekich, also known as M. Zekich and Muho Zekica, died on December 17, 1953, in Multnomah County, Oregon, intestate without legal heirs capable of inheriting or taking the proceeds of his estate;

2. That the clear proceeds derived from said estate situated in this state became the property of the State of Oregon on the date of the death of said deceased;

3. That the administrator of said estate deliver to the State Land Board of Oregon for payment into the common school fund of this state the clear proceeds of the estate of this deceased situated in this state.

Robert Y. Thornton, Attorney General, Catherine Zorn, Assistant Attorney General, Attorneys for State Land Board.

Duly sworn to by F. C. Deckebach, jurat omitted in printing.

[fol. 8]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

DEPARTMENT OF PROBATE

No. 71 702

In the Matter of the Estate of
MUHAREM ZEKICH, Deceased.

ANSWER OF HEIRS TO PETITION OF THE STATE OF OREGON FOR FINDING AND ORDER OF ESCHEAT—Filed November 4, 1954

Come now Habiba Turkovic, Dzedja Popovac, Lutvo Zekic, Ibro Zekic, Sefko Muradbasic, Dika Muradbasic, Murta Brkic, Melka Zekic, Jasmina Zekic and Rajka Zekic, by Branko Karadzole, Consul General of Yugoslavia at San Francisco, California, their consular representative and attorney in fact, by Peter A. Schwabe, of Haas & Schwabe, their and his attorneys, and for their answer to the Petition of the State of Oregon for Finding and Order of Escheat, filed herein admit, deny and allege as follows:

I.

Admit Paragraph I of said petition.

II.

Admit Paragraph II of said petition, and allege that they are all of the next of kin and heirs at law of the said Muharem Zekich, deceased, their ages, relationships and shares of inheritance being as follows:

Habiba Turkovic, aged 63 years, sister
entitled to 1/7th

Dzedja Popovac, aged 60 years, sister
entitled to 1/7th

Lutvo Zekic, aged 57 years, brother
entitled to 1/7th

Ibro Zekic, aged 54 years, brother
entitled to 1/7th

Sefko Muradbasic, aged 53 years, nephew
Dika Muradbasic, aged 40 years, niece
each entitled to 1/14th

being all of the children and issue of Djulsa Muradbasic, a predeceased sister.

Murta Brkic, aged 42 years, nephew
entitled to 1/7th

being the only child and issue of Nadjla Mehmedbasic, a predeceased sister.

Melka Zekic, aged 21 years, niece
Jasmina Zekic, aged 19 years, niece,
Rajka Zekic, aged 17 years, niece,
each entitled to 1/21st

being all of the children and issue of Safet Zekic, a pre-[fol. 9] deceased brother all of said heirs residing in and being nationals of Yugoslavia.

III.

Admit Paragraph III of said Petition.

IV.

Admit Paragraph IV of said Petition.

V.

Deny Paragraph V of said Petition, but allege that in fact and in law reciprocal rights of inheritance as prescribed by ORS 111.070 did exist as of the date of the decedent's death and do now exist between the United States and Yugoslavia, and that under the provisions of ORS 111.070 these answering next of kin and heirs at law of the said Muharem Zekich, deceased, are entitled to take and receive the proceeds of this estate in the manner and shares as in Paragraph II above set forth.

Wherefore, these answering heirs at law of Muharem Zekich, deceased, pray that the Petition of the State of Oregon for Finding and Order of Escheat be denied and dismissed and that this Court make and enter its order that the clear proceeds of this estate be distributed to these answering next of kin and heirs at law of the said Muharem Zekich, deceased, as in Paragraph II above set forth.

Haas & Schwabe, Attorneys for Heirs.

Duly sworn to by Peter A. Schwabe, jurat omitted in printing.

[fol. 11]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

DEPARTMENT OF PROBATE

No. 71-316

In the Matter of the Estate of
MARION BEROSH, Deceased.

Transcript of Proceedings of November 4, 1954

Hon. James W. Crawford, Judge, without a jury.

APPEARANCES:

Claimants appearing by Haas & Schwabe (by Mr. Peter A. Schwabe).

The State of Oregon appearing by Hon. Robert Y. Thornton, Attorney General of the State of Oregon (by Miss Catherine Zorn, Deputy).

* * * * * * *

[fol. 12] Direct examination.

By Mr. Schwabe:

Mr. Schwabe: May I sit over here, your Honor? The witness is hard of hearing.
The Court: Yes.

By Mr. Schwabe:

Q. Will you state your full name and also your official title and residence to the court?
A. Sinisa Kosutic, my name is.
Q. What is your official position and title?
A. I am consul of Yugoslavia in San Francisco.
Q. Does the San Francisco consulate general have official consular jurisdiction of Oregon?
A. Yes.

Q. I think it has jurisdiction of eleven western states.

A. Yes; of the eleven western states.

Q. How long have you been in this country?

A. I have been over four and a half years.

Q. During those four and a half years have you been consul of Yugoslavia in San Francisco?

A. Yes, all the time.

Q. I understand that there is a consul general at the head of the office and then there are consuls that have various duties in the consulate. Is that correct?

A. Yes.

Q. Would you tell us what your functions and duties are [fol. 13] at the consulate general?

A. I am head of the legal section of the consulate general.

Q. In your capacity as the head of the legal section of the consulate general, what type work do you do, or what sort of cases do you have under your jurisdiction?

A. Mostly inheritance cases, mostly.

* * * * * * *

Q. Well now, how long have you been in the diplomatic or consular service of Yugoslavia?

A. I have been since 1945.

Q. Would you tell us something of your education and [fol. 14] background; of what schools or universities you are a graduate and what subjects you studied?

A. I graduated from law school in Belgrade, Yugoslavia, in 1934 and since that time until the beginning of the war I practiced law.

Q. You are a practicing lawyer; and where?

A. In Belgrade.

Q. I don't think you have given the name of the university from which you graduated in law.

A. It is the university—Belgrade University.

Q. Now you were graduated in law in 1934 and practiced until 1939. Is that when the war broke out?

A. Until 1941.

Q. 1941?

A. Yes.

Q. And you have been in the consular diplomatic service of Yugoslavia since the end of the war in 1945?

A. Since the end of the war, yes.

[fol. 15] Q. Mr. Kosutic, are you familiar with a branch of the Yugoslavia government which has the title of the Commission for the Interpretation of the Laws of the Peoples Assembly of the Federal Peoples Republic of Yugoslavia? Are you familiar with that?

A. Yes, I am.

Q. Can you tell us briefly what the function is of this Commission, what they do, what their duties are? Their purpose?

[fol. 16] A. Their purpose is to interpret our law, to clarify some law question which is not clear enough.

Q. If I am not leading, I might ask you this: Is there a commission of your government to which questions of law are addressed and they issue clarifying statements of the law—a declaration of what the law of Yugoslavia is on that particular point?

A. Yes.

Q. Then under the Yugoslavia law is it necessary for the Peoples Assembly, which is the parliament of Yugoslavia, to then adopt or reject the binding interpretation of the Commission?

A. Yes.

Q. Now, do you know if this Commission of which we have just been speaking has handed down any so-called binding interpretation on the question of the rights of American citizen heirs or beneficiaries to inherit from estates in Yugoslavia?

A. Yes, I am familiar with that.

(Certain documents were marked by the Clerk Claimant's Exhibits 17-A and -B for Identification.)

Q. This Claimant's Exhibit 17-A for Identification, is that a certified and authenticated copy of the binding interpretation issued on August 3, 1953, by the Commission for the Interpretation of the Laws of the Peoples Assembly?

A. Yes.

Q. And referring to Claimant's Exhibit 17-B, is that, then, the adoption of the binding interpretation by the Peoples Assembly of Yugoslavia?

A. Yes, it is.

[fol. 17] Q. Dated November 3, 1953?

A. Yes.

Q. To your knowledge was this binding interpretation to which these two exhibits pertain, was that in full force and effect all during the month of December, 1953?

A. Yes, it was in effect.

Q. Is it still in effect at this time?

A. Yes, it is still in effect.

Q. Now, Mr. Kosutic, from your background as a law graduate of Yugoslavia, as a practicing attorney in Yugoslavia, and your nine years of service in the consular and diplomatic service of your country, do you say that the United States citizens residing here in the United States, have the right to take real and personal property and the proceeds thereof from estates in Yugoslavia, either as heirs at law, or as beneficiaries under a will, upon the same terms and conditions as inhabitants and citizens of Yugoslavia?

A. Yes.

Q. Is there any discrimination between—as to rights of inheritance in real or personal property, either as heirs at law or under a will, between American citizens and Yugoslavia citizens?

A. No, there is no—any discrimination.

Q. Now, do citizens of the United States who have a right of inheritance from estates in Yugoslavia, do they have the right to receive, by payment to them within the United States or its territories, money originating from estates of persons dying in Yugoslavia?

A. Yes, they have.

[fol. 18] Q. Upon the subject of enjoyment of the inheritance: Does the Yugoslavia government, when inheritance funds come from estates in the United States to heirs or beneficiaries in Yugoslavia, does the Yugoslavia government in any way confiscate that money or any portion of it?

A. Yugoslavia does not have any right to confiscate, sir, or to deduct inheritance which is going from the United States to Yugoslavia, to Yugoslavia heirs.

Q. That doesn't quite answer the question. I didn't ask you whether the Yugoslavia government had any right to do it; I am asking you do they do it?

A. They don't do that.

Q. They don't do that. Do the Yugoslavia heirs or beneficiaries of inheritances from the United States, do they receive the benefit or use or control of the money or the property from estates in the United States, without confiscation in whole or in part by the Yugoslavia government?

A. They do.

Q. Tell me whether any—does the Yugoslavia government levy any taxes of any kind against inheritance money coming from the United States and going to Yugoslavia?

A. Not at all. If taxes were paid here in this country, then the Yugoslavia government does not tax inheritances.

Q. Do they take anything whatsoever away from the inheritance moneys which go from the United States to Yugoslavia beneficiaries?

A. Nothing.

* * * * * * * *

[fol. 19] Portland, Oregon,
November 5, 1954.
9:30 A.M.

SIXISA KOSUTIC, a witness on behalf of the Claimant, resumed the witness stand and, having been previously sworn, further testified as follows:

Mr. Schwabe: Your Honor, may I have the privilege of asking the witness a few questions, please?

The Court: Yes.

Direct examination.

By Mr. Schwabe (Continued):

Q. Mr. Kosutic, you testified yesterday that you have been at the San Francisco consulate general of Yugoslavia since May, 1950. Is that right?

A. Since April, 1950.

Q. April, 1950. But the consulate was officially opened in May, 1950?

A. Yes.

Q. Now, in the course of your duties, have any documents passed through your hands or through the consulate general, wherein American heirs or beneficiaries to estates in Yugoslavia have waived or relinquished their rights of inheritance?

A. Yes; many such documents passed through our office. I can't recall exactly, but every month we get such documents where American citizens just relinquish their shares to their relatives in Yugoslavia.

Q. Can you give us an estimate of about how many it is per month or per week or per year, so we get some idea of how many of these cases there are?

[fol. 20] A. We get every month—I can't say for sure—but six, seven, eight cases.

Q. That would be about a hundred or so a year?

A. Very close to 100 a year.

Q. What are these documents that you are talking about? Just tell the court exactly what they are and the reason for them.

A. It is a kind of document in which American citizens waive their shares to the—to their relatives in Yugoslavia, because they don't want it. They are in a much better economic situation here in this country. They want to help their brothers and sisters in the old countries.

Q. So these are relinquished, where they relinquish their inheritance to estates in Yugoslavia to their relatives in the old country?

A. Yes.

Q. And in effect they say, "We don't want our inheritances from over there."

A. Yes.

Q. You say there are close to about 100 a year of those?

A. Yes, I am sure.

Q. And that is in your jurisdiction, which covers the eleven western states?

A. Yes, our jurisdiction.

* * * * * * *

[fol. 21] Q. Now you testified to a binding interpretation, which is one of the exhibits here, and I would like to have

you explain to the court, if you will, what a binding interpretation is and how it comes about? What is the basis for it, for a binding interpretation?

A. Under the Yugoslavia constitution and law, a commission for the interpretation of the law was established, with the purpose to interpret federal laws.

Q. This commission to interpret federal laws, then, has a basis in the organic law of Yugoslavia?

A. Yes.

Q. Tell us—and speak to the court, please. Turn towards the court and speak to the court—tell us what, tell us how the thing works and how this binding interpretation in evidence here, how that came about and what the legal effect of it is.

A. A request for interpretation of laws may come from the Peoples Deputy, or by Committee of the House, or by [fol. 22] the Federal Supreme Court, and this request is submitted to the Commission, and after the Commission confirms the request, then the House or Assembly must confirm this binding interpretation, must ratify this binding interpretation; and from that moment, from that date, it is a law in Yugoslavia which is binding on all the judges, all officials of the government, and, therefore, the foreign exchange control officials.

Q. Now, then, if the binding interpretation, which is Claimant's Exhibit 17-A for Identification here, if that is admitted into evidence by the court here, if that binding interpretation shows that full reciprocal rights of inheritance are due American citizen heirs or legatees, then are all judges or public officials, for instance, those that manage foreign funds control, national bank officials, etc., are they all required and compelled to follow and act in accordance with the binding interpretation?

A. Yes; they have to follow the binding interpretation.

Q. Now I would like to refer you to this Exhibit 4 that has been admitted in evidence, which is the note by your secretariat of state for foreign affairs, to the embassy of the United States in Belgrade, your note, that is, the Yugoslavia note is 515370/53, dated October 21, '53, and is in answer to the American note No. 1368, dated May 21, 1953, I would like to call your attention to the following words:

"In connection with Point 3 of the above mentioned position, the Secretariat wishes to point out that according to Yugoslav foreign exchange regulations, an application for the permit of a free transfer of all monetary means should be submitted in each individual case. The Secretariat wishes also to stress, that these regulations con- [fol. 23] cerning foreign exchange are not in contradiction with the Convention of 1881, since the claims of American citizens for the transfer of proceeds of the sale of their property and their goods in general are settled favorably by the competent authorities pursuant to paragraph 3, Art. II of the Agreement of 1881." Now, relating this language in this note to the remittances of inheritance funds out of estates in Yugoslavia to American citizen heirs or beneficiaries, what is the purpose or effect of this language?

A. The purpose of this language is to show that the government of Yugoslavia grants, guarantees payment to American citizens of their inheritances without any exception and discretion—or administrative discretion.

Q. Then as I understand it, by this note, the Yugoslav government has assured our government that as far as inheritance moneys coming from Yugoslavia to American citizen heirs or beneficiaries are concerned, they have the right to have that money remitted to them, and the Yugoslav government will see to it that it is remitted. Is that right?

A. Yes, that is right. They have absolute right to get this money here.

* * * * * * *

[fol. 23a] Cross examination.

By Miss Zorn:

* * * * * * *

[fol. 24] Q. I believe you mentioned that the Yugoslavian constitution could be amended by law. Will you please explain?

A. Mr. Schwabe corrected me, and he was right. It isn't amended; it is a law which was brought under the constitution; it is constitution law.

Q. Would such a law then affect the constitution?

A. This law does explain the development, economical and political development, in Yugoslavia.

Mr. Schwabe: May I make a statement, your Honor? It is a little irregular, but we have this law here in the English translation. It was enacted in January, 1953. I would be very happy to offer it, because it is a law which reorganized the structure of the Yugoslav government, it isn't a constitutional amendment. The constitution that is in here is the constitution, but this is a sort of reorganization of the Yugoslav government from its evolution in 1945 to 1953.

The Court: It is available for inspection?

Mr. Schwabe: Yes, it is right there and we will be very happy to leave it here.

By Miss Zorn:

Q. In other words, a law of this kind would be read together with the constitution?

A. I don't understand.

[fol. 25] Q. A law of this kind, such as you mentioned, would be read together and applied together with the constitution?

A. Yes.

Q. If such a law were different from the provisions of the constitution, such as this revision you mentioned, that, then, would supersede the constitution to that extent, wouldn't it?

A. Yes.

Q. Does Yugoslavia have any law other than statutory laws?

A. We have statutory laws.

Q. Do you have any other laws that the court applies which are not statutory laws?

A. No, we don't have.

Q. In our country we have some laws which we refer to as common law. Does Yugoslavia have anything of that type, or are you familiar with what we have?

A. Yes, I am familiar. We don't have those type of law.

* * * * * * *

[fol. 26]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

No. 71316

In the Matter of the Estate of
MARION BEROSH, Deceased.

Excerpts From Proceedings of March 20 and April 1, 1957

* * * * * * *

[fol. 27] Direct examination.

By Mr. Schwabe:

Q. Mr. Temer, would you state your name, residence, and title or official position.

A. My name is Sava Temer. I am consul of Yugoslavia at the consulate general of Yugoslavia in San Francisco.

Q. And referring to Plaintiff's Exhibit No. 25, which is a copy of an exequatur issued in your name by the President on June 24, 1955, are you the Sava Temer mentioned in this exhibit?

A. That is right. I am the Sava Temer to whom this exequatur has been issued.

Q. And is that exequatur in full force and effect today? Do you still hold that office?

A. That exequatur is still in full force and effect today.

Q. Mr. Temer, would you please tell us when and where you were born and briefly your scholastic career, and then go on into the—your career in the service of the Yugoslav government.

A. I was born in Yugoslavia in Zrenjanin in 1911. I have studied elementary schools, high schools, and then went to the University of Belgrade, where I graduated at law school in 1936. Having graduated in the law school, [fol. 28] I went to the District Court at Zrenjanin where I have been practicing for something above one year, and then I went to a private attorney where I have been practicing up to the war.

After the war I entered the civil service and I am now official of the Yugoslav government in the Secretariat of State for Foreign Affairs of Yugoslavia, and I have been there working in the department of the legal advisor to the Secretariat of State for Foreign Affairs up to the time when I have been transferred to San Francisco as a consul of Yugoslavia in San Francisco.

Q. When did you go to San Francisco?

A. I went to San Francisco in 1955.

Q. And would you tell us more specifically the length and time of your service in the office of the legal advisor of the Secretariat for Foreign Affairs.

A. Excuse me. The time?

Q. Yes, the time. How long you were there.

A. I have been working in the legal advisor's office approximately something above three years, I think.

Q. And would you tell us briefly what the nature of your work and duties were in that position.

A. In the legal advisor's office of the Secretariat of State for Foreign Affairs we have been mostly concerned with legal problems affecting my country, that is, Yugoslavia, and the different foreign countries which we are having [fol. 29] diplomatic and other relations. There were mostly problems of international treaties involved.

Q. Prior to your work in the legal advisor's office to the Secretary for Foreign Affairs, what work did you do in the government service?

A. I have been working prior to that in the office of the President of Yugoslavia, and in that capacity I was sent then to Germany, where I spent four years attached to the United States occupation forces in Germany.

Q. What degree in law did you receive upon your graduation from the University of Belgrade Law School?

A. Well, we do have one degree there which is enabling a man graduating from that school to practice law. I do not know how that would compare to the American grades.

Q. Now I will ask you if you have had an opportunity to study and have studied the deposition of Kiril, K-i-r-i-l, Jaszenko, J-a-s-z-e-n-k-o, whose deposition was taken as a witness for the attorney general of Oregon, and which is

Exhibit 24 in this record? Have you had an opportunity to study that deposition?

A. I have read a copy of the deposition made by Mr. Jaszenko.

Q. Are you quite thoroughly familiar with that deposition?

A. I think I am familiar with it.

* * * * * * *

[fol. 30] Q. * * * Now next on Page 9, Mr. Jaszenko refers—it's on our Page 4, at the bottom of our Page 4—Mr. Jaszenko refers to an order concerning the amounts and procedure for sale of foreign instruments of payment to pri-

[fol. 31] vate persons of October 31, 1952.

Q. * * * Are you familiar, Mr. Temer, with that order?

A. Yes. I know of the order issued and signed on October 31, 1952.

* * * * * * *

[fol. 32] Q. Very well. Now, have you studied not only the original but—well, yes, have you studied the original text of that order and are you familiar with it?

* * * * * * *

[fol. 33] Q. Now would you tell us briefly and without too much detail what subjects that order covered and what the purpose of that order was.

A. This is a special order issued by the Yugoslav Government covering, I would say, out of pocket expenses up to a value of three thousand dinars for various specifically mentioned needs of Yugoslav nationalists and foreigners residing in Yugoslavia.

* * * * * * *

[fol. 34] Q. Then is there any reference, Mr. Temer, in this order or has this order any application whatsoever to inheritance funds?

A. This order does not deal at all with inheritance, with the transmittal of inheritance funds.

Q. So this, as far as the flow of inheritance funds from Yugloslavia out of an estate in Yugoslavia to a heir or beneficiary in the United States, this order would have no application?

A. No, this order would not apply at all to the transmittal [fol. 35] of inheritance funds due to American citizens out of Yugoslavia.

. . . . . .

[fol. 36] Q. I think that treaty is in evidence here as Claimant's Exhibit No. 9.

I am handing you here a copy of that Article 2 which has been received in evidence as part of that treaty, and just ask you to read that Paragraph 3 into the record.

A. They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

Q. Now, how does Yugoslavia and your government construe that treaty as being applicable to the transmission of inheritance funds out of the states in Yugosalvia to United States citizens?

A. That treaty has been so construed by our—by Yugoslavia that American citizens do have the full right to export freely the proceeds of their inheritances.

[fol. 37] (Whereupon document was marked Claimant's Exhibit No. 26 for identification.)

Q. Now I ask you, to your knowledge, Mr. Temer, is there any official act of any instrumentality of the Yugoslav Government which confirms in official documentary form the fact that Yugoslavia does as a matter of policy and right permit the transfer of inheritance funds out of the Yugoslavia states to American heirs or beneficiaries?

A. Yes, I know.

Q. Now I hand you Claimant's Exhibit No. 26, which is a certificate by the Federal People's Assembly or of the Federal Executive Council. Would you please examine that and explain to us what that document is.

A. When there was reconstruction of the governmental form in Yugoslavia, the previously existing Ministry of Finance was replaced by Secretariat for Budget, and as previously, the Ministry of Finance was responsible for issuing the licenses for transmittal of foreign currency

funds to American citizens. When this reconstruction of the government took place, there was in the official gazette publicized an order of the Federal Executive Council of the Federal People's Assembly of Yugoslavia stating that the Federal Secretary of State for General Administration and Budget will have the authority to issue orders for the transmittal from Yugoslavia to the United States of funds [fol. 38] realized upon liquidation of decedents' estates, and the Federal Secretary of State for Administration and Budget shall continue to order the transmittal from Yugoslavia to the United States of funds realized from the liquidation of decedents' estates upon establishing that such transmittal devolves from an inheritance due to a citizen of the United States, and that such transmittal has been requested by the party within three years from the effective date of the decree of distribution.

Q. Now, in practical effect, what does that establish as to the right of an American citizen heir-beneficiary out of an estate in Yugoslavia; to have his inheritance funds transmitted and paid to him in American dollars in this country?

A. This means that an American citizen does have the right to have his inheritances transmitted from Yugoslavia to the United States in so far as he can prove that he is a United States citizen and that the funds which he wants to have transmitted are devolving from a decedent's estate.

Q. What is the date of that instrument that you have just referred to, Exhibit 26?

A. The date of this instrument is—just a moment.

Q. In the upper left-hand corner, isn't it?

A. The official gazette, the date is the 14th of October, 1955.

Q. I am sorry, Mr. Temer, but on my copy of this the date shows as November 28, 1955. Was that the date when this [fol. 39] certificate was issued or—

A. (Interposing) No, that is the date when it came effective because there is one date when it was signed, the other date when it was publicized in the official gazette, and then when it comes into effect.

Q. It was publicized in the gazette on October 26, 1955?

A. That's correct.

Q. And I notice it says that it becomes effective as of

the date of publication in the official gazette. Would that not make the effective date 1955?

A. It became effective October 26, 1955.

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[fol. 40] Q. Is this instrument, Exhibit No. 26, did that create a new right or simply change jurisdiction from one government bureau to the other and vest the new government bureau with the right to continue the transmittal of those inheritances?

A. This order does not constitute a new right. The reason for bringing this order was to effect the transfer of jurisdiction from the previously existent Ministry of Finance to the subsequently established Secretariat of State for Budget, and that is legible from the word of this certificate where it says that it shall continue to do so. So that is not a law which came—which was enacted in '55. The transfer of jurisdiction became effective in '55 but not the right for transmittal.

Q. Now, this direction here changing the jurisdiction from the secretariat of finance to the secretariat for the general administration and budget for the transmittal of inheritances, inheritance funds, to the United States, did that exist in December, 1953?

A. That right has existed in 1953, December, too.

Q. Disregarding the day of the month, both Joe Stoich and Muharem Zekich died in December, 1953. Was this right to the remittance of inheritance funds from Yugoslavia to American heirs or beneficiaries in existence at that time?

A. It was in existence at that time.

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[fol. 41] Q. Now, you have testified that an American citizen, heir, beneficiary would have the right to have jewelry, heirlooms, personal things in personal property inherited from an estate transmitted to him in the United States. Will you tell us on what basis that right rests.

A. That right again rests on Paragraph 3 of Article 2 of the treaty which we have with the United States from 1881.

Q. Now, Mr. Teiner, you have repeatedly mentioned the treaty of 1881. Are you familiar with the decision of the California Supreme Court in Arbulich's Estate which was handed down in May 25, 1953, and is reported at 257 Pacific Second 433? Are you familiar with that decision?

A. I am familiar with the Supreme Court decision in the Arbulich case.

Q. I would like to read you what the court said in that case as to their interpretation of the treaty and the article to which you refer. . .

It says: "Appellant contends, nevertheless, that the provisions of Article II of a treaty entered into in 1881 between [fol. 42] the United States and the Kingdom of Serbia, 22 Stat. 964 (of which the present Republic of Yugoslavia is the successor government) and certified by the Secretary of State of the United States as remaining in full force and effect between this country and Yugoslavia, are applicable and controlling in appellant's favor on the issue of reciprocity. It may be noted that the first paragraph of Article II seemingly treats only of 'citizens of the United States in Serbia (Yugoslavia) and Serbian (Yugoslav) subjects in the United States,' rather than, as is the situation in the present case, of a United States citizen who dies in the United States and leaves property to a Yugoslav subject who is in Yugoslavia, and therefore is not here applicable. Even if we assume its applicability in that respect, however, the rights granted are only those given by each of the contracting nations 'to the subjects of the most favoured nation,' and do not purport to equal the rights given or guaranteed by each of the contracting nations to its own citizens. Consequently the treaty provisions do not establish the reciprocal rights required by the Probate Code."

Now, does the government of Yugoslavia interpret this treaty to which reference is made here as requiring the physical existence and residence in Yugoslavia of an American citizen in order to receive the benefits of this treaty?

A. This treaty has in Yugoslavia never been construed so [fol. 43] so that the term of citizen would be narrowed down to the term of a resident. This treaty has been carried out in Yugoslavia or referred to in Yugoslavia only as referring

to United States citizens, generally, regardless of whether they are residing in Yugoslavia or not in Yugoslavia.

Q. Now, immediately following what I have just read to you comes the question—this is at the bottom of Page 12, our Page 6 (reading:)

To what extent would inheritances or legacies originating from estates of persons dying outside of Yugoslavia be received by Yugoslavian heirs or legatees residing in Yugoslavia?

And I will read you part of the answer (reading:)

There are no restrictions prohibiting a Yugoslav heir from receiving property due to him from the estates of persons dying outside of Yugoslavia. However, when received, this property is subject to all the existing limitations imposed by the present Yugoslav government on private property, such as nationalization, confiscation, expropriation, land reform, restrictions of management, and the like.

Now, when inheritance such as, for instance, the brothers and sisters of Stoich in Yugoslavia which—to this estate which we are directly concerned here, when that money reaches Yugoslavia, is it subjected to any sort of nationalization, confiscation, expropriation?

A. When an inheritance is transmitted to Yugoslavia [fol. 44] that inheritance is not subject to any restrictions, and the heir, the party concerned, does have the full right to enjoy it. It is not subject to nationalization, to—or to other restrictive measures.

Q. Are there any taxes, inheritance taxes or any sort of taxes in Yugoslavia, to which inheritance funds to any heirs are subjected on arrival from the United States?

A. No, inheritance funds from heirs of Yugoslavia would not be subject to inheritance taxes.

Q. What are the charges of your consulate or the charges of any other agency of the Yugoslav government by way of deductions from the funds which you receive on behalf of Yugoslav heirs or beneficiaries from an American estate?

A. The respective shares of the Yugoslav heirs in estates coming from abroad, specifically from the United States, would be subject to pay only such fees as the local court here would design, as the local taxes would provide

for, as the local attorneys' fees would provide for, and as would provide the consulate taxes, if the estate is going through our consulate. Our consulate fees are one per cent of that portion—of the net estate, and all the rest is passing over without any diminution to the party concerned.

Q. Is there any confiscation in whole or part?

May I have the Volume 1 of the Code, please?

The Court: Which? Volume 1?

[fol. 45] Mr. Schwabe: Volume 1 of the Code.

(Court hands Mr. Schwabe requested volume.)

Mr. Schwabe: Thank you, sir.

Q. Now I am going to read to you subsection (c) of Section 111.070 of Oregon Revised Statutes, which is the statute under which we are conducting this case. (c), this is one of the conditions under which foreign heirs or beneficiaries may inherit: upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

Now, do the people, after they receive their money over there from American inheritance, do they have the free use and benefit of that money?

A. They will have the free use of that money, and this money is not due to be confiscated in whole or in part.

Q. Are there any restrictions other than the ordinary restrictions of any society governed by law as to the enjoyment or the use of the money that they receive from such an inheritance?

A. They may enjoy and use the money according to the regular laws of the country, as in any other country.

Q. Now, in his answer, going on, this answer to the same question, Mr. Jaszenko refers to certain land reform laws of [fol. 46] August 23, '45, March 18, 1946, and November 26, 1947, providing for certain limitations in the quantities of land that a person may hold. Do those restrictions apply—well, a person can't inherit land from America in Yugoslavia, so I will skip that.

A. No, that cannot happen that somebody inherits land from abroad.

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[fol. 47] Q. I think just before the recess we covered the matter of nationalization in this long answer of Mr. Jaszenko's. The next is land reform. That, of course, could not, land reform laws in Yugoslavia, could not possibly have any effect.

A. Not at all. Nobody can transfer an inherited piece of land abroad to Yugoslavia.

Q. Next he refers to expropriation and mentions a law of April 4, 1947, • • •

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Now are you familiar with that law?

[fol. 48] A. Yes. But that is again concerning expropriation of real estate, and if somebody in Yugoslavia would inherit property from the United States, he cannot possibly transmit a house or land from the United States to Yugoslavia. Otherwise, it is a law of expropriation as if, for instance, here in the United States you would like to cut a highway through a portion of somebody's property, that portion may be expropriated for whatever public use it is designed.

Q. Is that what you are speaking of is the law of eminent domain?

A. Yes.

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[fol. 49] Q. Now, Mr. Temer, there has been discussion heretofore of the rate of exchange for inheritance funds passing from the United States to Yugoslavia at the rate of three hundred dinars. Now will you tell us if that rate is still in existence or if it has been changed in any respect.

A. The official exchange rate of three hundred dinars to one dollar is still in full force and effect.

Q. Now, at what rate are the inheritance funds paid out to Yugoslavia beneficiaries?

A. The inheritance funds coming from the United States [fol. 50] to Yugoslavia are transmitted to the official exchange rate of three hundred dinars per one dollar—

Q. (Interposing) Just a moment. By whom is that rate fixed?

A. That is the rate fixed by the International Monetary Fund.

Q. Okay.

A. And above those three hundred dinars, which is the official exchange rate, the recipient is entitled to a premium of a hundred per cent. That means that the recipient would receive practically six hundred dinars per one dollar.

Q. And can you tell us when, at least approximately, that premium of one hundred per cent went into effect?

A. I do not know exactly the date, but I think it was somewhere by the end of '54.

Q. Subsequent to the dates of death of which we are here concerned?

A. Yes. Before that date the recipients were entitled to coupons above the exchange rate, and those coupons were used for buying rationed goods in the store. But when we discontinued to have rationed goods in the store, then instead of those coupons the beneficiaries got the premiums which I have been referring to.

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[fol. 50a] Cross examination.

By Miss Zorn:

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[fol. 51] Q. Now, this morning Mr. Schwabe referred to the case of Arbulich's Estate. In that particular case the Foreign Exchange Control Law in effect in Yugoslavia at the time of that—of the decedent's death in this case in 1947, I believe, was quoted to—quoted in part. I wonder if I could read you part of that law and if you could tell me whether or not that law is still in effect. The case refers to the law as Section—or number 630. By virtue of Article 2 of the Resolution of November 30, 1943, on the Supreme [fol. 52] Legislative and Executive People's Representation Body of Yugoslavia as a provisional organ of the supreme people's authority in Yugoslavia and in connection with the Resolution of August 10, 1945, covering the change of

name. And then it goes on to quote the law. The title of the law is The Law Regulating Payment Transactions with Foreign Countries, in parentheses, Foreign Exchange Law. Basic Rules, Article 1:

"All financial transactions with foreign countries, as well as transactions within the country in relation to foreign countries that may affect the development of the credit balance of our country and the international value of our domestic currency (foreign exchange transactions) are subject to the control of the Federal Minister of Finance (foreign exchange control)."

And Article 2 reads as follows: "Article 2

"Primarily the following transactions are subject to control:

"(a) All transactions within the country and with foreign countries: in foreign exchange, claims and debts in foreign currency and other values in foreign currency;

"(b) All transactions with foreign countries: in domestic currency, credits and debits in domestic currency and other values in domestic currency;

"(c) All transactions with foreigners within the country, causing changes in property relations between our country and foreign countries; and * * *." Then there are omission marks.

[fol. 53] Going on to Article 3. "Article 3

"The term 'transaction' from Articles 1 and 2 as used in this law means the transfer of values and metals and payments, it also means the establishment, cancellation and change of obligations and actual rights to values and metals, as well as changes of holders of rights and obligations."

"Article 4

"Permission must be had for transactions described in Articles 1 and 2 of this Law according to foreign exchange regulations."

"Article 5

"It is forbidden to conclude business in the country the amount of which in domestic currency is tied to gold or some foreign currency." And then there are omission marks.

"Article 6

"(1) The Federal Minister of Finance as the supreme foreign exchange authority, exercises his control over foreign exchange through:" and then there is a bracket showing various agencies and then again omission marks.

"(2) The Federal Minister of Finance regulates the limits of jurisdiction as between the foreign exchange authorities in regard to the exercising of foreign exchange control, be it by Regulations from Article 25 of this Law, or by separate decisions."

"Article 7

[fol. 54] "(1) Transactions, subject to foreign exchange control according to this Law, may be conducted only by persons and establishments authorized to do so by the competent foreign exchange authorities, unless the conduct of such business is permitted by the foreign exchange rules themselves." Then again there are omission marks.

"Article 8

"The National Bank, whenever authorized by the Federal Minister of Finance, may at any time request the holders in the country to offer for sale to the National Bank all their foreign exchange (regardless whether it be in the shape of claims in foreign currency, checks, drafts, etc.), foreign currency, foreign values and precious metals. If the National Bank decides to buy, it shall fix the terms, * * *." And then the omission marks.

"Article 12

"(1) The term 'devisa' as used in the foreign exchange regulations means a claim abroad on whatever basis, in whatever currency, regardless of the manner of disposal * * *." And then there are omission marks again.

"Article 13

"(1) The term 'foreigners' as used in this Law means all persons and corporations with permanent residence or seat abroad, regardless of citizenship of persons and ownership of enterprises.

[fol. 55] "(2) The term 'domestic persons' means all persons and corporations with permanent residence or seat within the country, regardless of citizenship of persons and ownership of enterprises." Omission marks,

"Article 16

"(1) The penalties for foreign exchange infractions are:" omission marks,

"2. Confiscation of objects or values constituting the foreign exchange infraction, in full or in part." Omission marks again.

"(2) The Federal Minister of Finance shall pronounce penalties." Then there are omission marks.

"Article 25

"The Federal Minister of Finance shall issue more detailed rules, regulations and decisions for the execution of this Law, upon consulting the National Bank."

And that's the end of the quotation in this case.

Now I realize it's difficult to follow any reading, perhaps, so if you would like to examine this and look it over, please feel free to do so.

A. I realize that this is—you have been quoting some translations of the Foreign Currency Control Law. There is a Foreign Currency Control Regulation, but you have not been quoting Article 8 of that Foreign Currency Control Regulation Law, and in Article 8 of that law it is pro-[fol. 56] vided that Foreign Currency Control Regulation represents those provisions of a treaty with foreign countries which concerns itself with payments, and by virtue of that provision in Article 8, whatever regulations there would be in this internal law of Yugoslavia would not apply to an American because the Treaty of 1881 in Paragraph 3, Article 2, provides that the Americans would be at liberty

to export their goods in general; and as an international treaty is the supreme law, so it is also in this very law expressed that such treaty provisions represent Foreign Currency Control Regulations. So, if I may summarize it, because of that Paragraph 3 of an international treaty, this —those provisions wouldn't apply to an American citizen.

Q. Do I understand you correctly, this provision you mentioned, is that a part of this?

A. Yes.

Q. Law or is that an extra—

A. (Interposing) That is Article 8 of the Law you have been quoting.

Q. Yes. It is not a separate amendment?

A. No, that is this law, Article 8.

Q. Now I don't recall. Did you say whether or not this law was still in effect in 1953?

A. The Foreign Currency Regulation Law with certain amendments is still in effect.

[fol. 57] Redirect examination.

By Mr. Schwabe:

* * * * * * *

Q. Now, you mentioned relinquishment. Would you tell us how those relinquishments by Americans to estates in Yugoslavia, how those are occasioned, how they arise and how they operate.

A. Excuse me. I cannot understand you.

Q. The relinquishments. You spoke, in response to a question by Miss Zorn, you spoke of relinquishments by American citizens of their rights of inheritance of estates in Yugoslavia. Would you tell us how you come into play with those or what your functions are, if any, in respect to those.

A. Oh, we come in only in the capacity of authenticating a document. If you have here a United States citizen who may have a brother or a relative in Yugoslavia and he wants to relinquish his share to that—to his relative in Yugoslavia, then he draws up an affidavit to that effect and goes to a notary public. Before that notary public he signs that deed; then such a document is brought to a county

clerk for super-authentication; then it comes to our office [fol. 58] to be authenticated as well because only when such an affidavit is authenticated by those three instances may it be applicable to the court in Yugoslavia. And through that procedure we happen to know that there was a great many of cases where American citizens would relinquish their inheritance rights to the benefit of some of their relatives in the old country.

Q. Now, I believe your exequatur shows, and it's already in evidence, that the consulate general in San Francisco has jurisdiction of eleven western states, including Oregon, Washington, California, and so forth; is that right?

A. That's correct.

Q. Now, can you give us any estimate at all of how many, from your own experience since you have been at the consulate, of these relinquishments have passed through the consulate in the course of a month or a year?

A. I would say that there may be about a hundred fifty, maybe, a year.

Q. A hundred and fifty a year?

A. Yes.

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[fol. 59] Q. Now, you stated in narrative form the provision of Article 8 whereby the Yugoslav Foreign Exchange Control Laws would not apply where Yugoslavia had a treaty or an international agreement with a particular foreign country.

Mr. Schwabe: Would you mark that, please.

(Whereupon a document was marked Claimant's Exhibit No. 28 for identification.)

Q. Handing you a paper marked Claimant's or Plaintiff's Exhibit 28 for identification and headed "Article 8," will you examine that and tell me what that is.

A. Yes. That is this Article 8 of the Foreign Currency Control Law which I have been referred to.

Q. Do you know who made this translation; where it came from?

A. This translation came from Yugoslavia, I believe.

Q. And this is the provision of the Foreign Exchange

Control Law which is not quoted in the Arbulich opinion which you testified to?

A. Miss Zorn did not quote that.

Q. And was this in effect in December, 1953?

A. Yes, it was in effect in 1953.

Mr. Schwabe: We would like to move for the admission in evidence for this provision of the law which Miss Zorn brought out on cross-examination. I move to have that admitted.

[fol. 60] Miss Zorn: Yes.

The Court: It is received.

(Whereupon document previously marked for identification as Claimant's Exhibit No. 28 was received in evidence and so marked.)

Q. Now just a couple of more questions here. Just supposing now we have an American citizen who has been directed to be a heir, or decreed to be a heir. Let's make it easy and say it's money. Suppose there are fifty thousand dinars in the bank in Belgrade and the court has declared an American citizen heir over here to be the heir to the estate, so the decree is entered by the court that that fifty thousand dinars is his, and supposing then he wants that money transferred to him over here, and through a representative over there or possibly directly he makes application to have that sent over here to him and he doesn't get it, either he doesn't hear any more about it or somebody tells him that it can't be done. "Sorry, but you can't get your money." If such a situation were to develop, does the American citizen heir have any rights or any remedies, any legal procedure at his disposal to enforce that right?

A. Yes. He can take redress and institute a suit, an administrative suit against that administrative official who either didn't act on his request or did not fulfill his [fol. 61] request, and he can redress that suit against such an official to the Supreme Court of Yugoslavia.

Q. Do you know of any suit in your experience, either in your government service abroad or while you have been over here, where any such a right has ever been denied and a suit brought to assert it?

A. Excuse me. Whether I know of any—

Q. (Interposing) Do you know of any case in your experience, such a right to have the money sent over here, transmitted over here, was denied and such a suit was brought?

A. I do not know of any case.

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Recross examination.

By Miss Zorn:

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[fol. 62] Q. Now, getting back to this Article 8 which Mr. Schwabe has here and you identified as part of the Foreign Exchange Control Law. This seems to conflict with the Article 8 which is quoted in this particular case. I was wondering if perhaps this may have been an amendment or [fol. 63] a change or something of that kind because the text of the law seems to be different than the Article 8 quoted here.

A. I do not know how this—how the text in this—in the book came to be quoted or whether that was subsequent, maybe, to that, but in 1953 the Article 8 of this Foreign Currency Exchange Law was as it is shown on this paper before you.

Q. I see. Might I ask you if the substance of this Article 8 as it appears in here was still in the Foreign Currency Exchange Law or would you be able to say offhand?

A. No, this is the Article 8 which you have before you, not what you have been reading in the book.

Q. Yes. What I was trying to bring out whether the substance of this Article 8 as appears here appears elsewhere in the Foreign Exchange Law or could you say offhand without examining the entire text?

A. I would have to examine both texts. I couldn't tell you offhand.

Q. I believe that's all.

A. But I can tell you that in 1953 this, what I have introduced now, was Article No. 8 and is today Article No. 8.

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[Vol. 64]

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

DEPARTMENT OF PROBATE

No. 71287

In the Matter of the Estate of

JOE STOICH, Deceased.

No. 71702

In the Matter of the Estate of

MUHAREM ZEKICH, Deceased.

CIRCUIT COURT OF LANE COUNTY, OREGON

No. 11900

In the Matter of the Estate of

THOMAS T. PRASCEVICH, Deceased.

Washington, D. C.,
Monday, December 12, 1955

Excerpts From Deposition of Kiril Jaszenko

Deposition of Kiril Jaszenko, called for examination pursuant to Commission to Take Deposition, dated October 13, 1955, at Suite 518 Southern Building, Washington 5, D. C., beginning at 9:00 o'clock a.m., before D. F. King, Commissioner, and Notary Public in and for the District of Columbia, and in response to interrogatories and cross-interrogatories, answered as follows:

[fol. 65] Thereupon—KIRIL JASZENKO, being first duly sworn, was examined and, in answer to interrogatories, testified as follows:

Direct interrogatories.

By Mr. King:

* * * * * * *

Q. Please tell about your academic education and legal training and background.

A. I have attended the High School in Belgrade, Yugoslavia, the Law School of the University of Belgrade, and the George Washington Law School in Washington, D. C.

Q. Of what law school or schools are you a graduate?

A. I graduated from the Law School of the University of Belgrade, Yugoslavia, in 1935 and the George Washington Law School, Washington, D. C., in 1954.

Q. What degrees do you hold?

A. I received a degree equivalent to LLB from the Law School of the University of Belgrade, Yugoslavia, and a degree of Master of Comparative Law (American Practice), from the George Washington Law School, Washington, D. C.

[fol. 66] Q. Have you been admitted to the practice of law?

A. Yes.

Q. Where?

A. I was admitted to the practice of law in Belgrade, Yugoslavia, in 1937.

Q. How long did you practice?

A. From 1937 to 1943.

Q. Please describe your practice and legal experience.

A. From 1937 to 1942 I practiced law as a lawyer's assistant in two different law offices. From 1942 to 1943 I had my own law office in Belgrade, Yugoslavia.

Q. What is your present position?

A. I am employed as a legal analyst in the Foreign Law Section of the Law Library, Library of Congress, Washington, D. C.

Q. What are the duties and functions of your position?

A. My duties are to be familiar with the laws, legal institutions, legal literature and legal practices in Yugoslavia.

Q. How long have you held that position?

A. I have held this position since January, 1952.

Q. Are you familiar with the Yugoslavian constitution and laws?

A. Yes. As stated before, it is my particular duty to familiarize myself with the Yugoslav laws and constitution, [fol. 67] and I endeavor to do this to my best of knowledge and ability.

Q. How have you kept yourself informed?

A. I read and study the Yugoslav materials regularly received by the Library of Congress, like Yugoslav official gazettes, legal periodicals, collections of laws, collections of decisions, commentaries, and so forth.

Q. Have you done any research on foreign law?

A. Yes.

Q. Have you done any research on Yugoslavian law?

A. Yes.

Q. What research have you done?

A. The research on Yugoslav law constitutes a necessary part of my regular duties. Research on the law of other countries, especially on Soviet Russian laws, was also done by me whenever required.

Q. Have you written or published any articles on foreign law in law reviews or other publications?

A. Yes.

* * * * * * *

[fol. 68] Q. The date governing the rights of inheritance under Oregon Revised Statutes 111.070 is the date of the decedent's death which in each of these cases occurred respectively on December 6, 7 and 24, 1953. Please base your answers to the following questions on the law as it ap-
[fol. 69] plied and was in effect on those dates:

In Article 18 of the Yugoslavian Constitution it is stated:

"No person is permitted to use the right of private property to the detriment of the People's community."

What is meant by a use of private property "to the detriment of the People's community"?

A. For the purpose of better understanding of Article 18 of the Yugoslav Constitution it should be borne in mind that after World War II the Yugoslav legislature issued a decree dealing with validity of laws enacted prior to and during World War II.

The decree was amended on October 23, 1946, and pursuant to it, the laws enacted by the occupation authorities during World War II were declared non-existent, while those enacted prior to that war to have lost their legal force. However, the principles of law contained in the pre-war laws may still be applied by courts to the situations not provided for by the new legislation, if they are not in conflict with the federal Yugoslav Constitution, the Constitutions of the Yugoslav republics (states), the laws enacted by the postwar legislature, and the principles of the constitutional order of the present-day Yugoslavia.

[fol. 70] Since the field of private law, that is, property law, contracts, torts, inheritance law, and so forth, was covered very little by the new legislation, the general principles expressed in the Constitution are of utmost importance for the law-enforcing agencies in measuring the extent to which the old laws are applicable.

Article 18 of the Yugoslav Constitution represents one of such guiding principles to be taken into consideration when applying the old laws or construing the new ones.

In practical application, Article 18 of the Constitution means that property rights secured to individuals by the laws enacted prior to World War II in the spirit of the traditional concept of private property rights, may be now changed or curtailed whenever it appears that they are in conflict with the principles and policies of the present regime as understood and enforced by the respective government agencies.

In the sector covered already by the new legislation it is known as nationalization, confiscation, land reform, expropriation, restrictions on management of property, production and distribution of commodities according to a plan, fixed prices, and the like.

In the fields not yet covered by the new legislation, the curtailment or modification of the property rights develops along the same lines, that is, they may be changed or abrogated whenever the policies of the present regime so require.

• • • • • • •

[fol. 71] Q. State whether or not Yugoslavia had a foreign monetary exchange control law governing the payment of money from within Yugoslavia to persons outside of Yugoslavia as of the above mentioned dates. If so please deliver a duly authenticated copy of such law, together with certified translation thereof, to the Commissioner to be annexed as an exhibit to the deposition.

A. Yugoslavia has a number of laws, decrees, orders, regulations and instructions governing the foreign currency exchange. The translation of the Order Concerning the Amounts and Procedure for Sale of Foreign Instruments of Payment to Private Persons of October 31, 1952, which was still in effect in December 1953, is attached hereto as Exhibit 1.

• • • • • • •

[fol. 72] Q. Under what terms and conditions could payment of money be made from within Yugoslavia to persons outside of Yugoslavia?

A. Payments of money, based on private transactions and obligations, to persons outside Yugoslavia, may be made only in accordance with the terms and conditions prescribed by the order, Exhibit 1.

Q. State whether or not such payments were made as a matter of course or whether they were a matter of discretion. Please explain.

A. The wording and the spirit of the order, Exhibit 1, [fol. 73] indicate clearly that such payments are a matter of discretion and not of right. This applies particularly to Clause (b) of Section 1 of the order, Exhibit 1, which does not provide for an exactly specified situation.

• • • • • • •

[fol. 74] Q. To what extent would inheritances or legacies originating from estates of persons dying outside of Yugo-

[fol. 75] slavia be received by Yugoslavian heirs or legatees residing in Yugoslavia?

A. There are no restrictions prohibiting a Yugoslav heir from receiving property due to him from the estates of persons dying outside of Yugoslavia. However, when received, this property is subject to all the existing limitations imposed by the present Yugoslav Government on private property, such as nationalization, confiscation, expropriation, land reform, restrictions of management, and the like.

If, for example, the inherited property consists of land, it may not exceed, together with the land already in his possession, the maximum prescribed by the Law on Land Reform of August 23, 1945, as amended on March 18, 1946 and November 26, 1947, which maximum ranges from 3 to 45 hectares, depending on the category to which the heir or legatee belongs. The land in excess of the prescribed maximum may be taken away from its owner.

* * * * * * *

[fol. 76]

Exhibit 1

Translation from Serbo-Croatian.

On the basis of Sec. 26 of the Decree on Export and Import of Goods and Transactions in Foreign Currency ("Sluzbeni list FNRJ" No. 35/52), in agreement with the President of the Economic Council of the Government of the Federal People's Republic of Yugoslavia, I herewith issue the following:

Order

Concerning the Amounts and Procedure for Sale of Foreign Instruments of Payment to Private Persons.

1. The National Bank of the Federal People's Republic of Yugoslavia may sell foreign instruments of payment to private persons, upon examination of each individual case, in an amount not to exceed 3,000 Dinar, and in the following situations:

a) to cover small expenses needed in connection with a trip abroad, on the basis of traveling documents having a properly issued visa;

b) to cover small traveling expenses of persons in possession of foreign traveling documents, who are considered domestic residents within the meaning of provisions on foreign exchange;

c) to stateless persons leaving the country as emigrants;

d) to foreign experts who were employed by an institution or social organization, but not by a commercial enterprise, who are going on annual leave or are leaving the country permanently, provided no other proper procedure for receiving foreign instruments of payments was stipulated in the contract;

e) for the purpose of providing relief;

f) for court and other taxes;

g) to pay alimony on the basis of a final court decision, if such payment is provided for in the respective payment agreements;

h) for other similar needs not mentioned above, which will be explained in detail in the petition presented to the National Bank of the Federal People's Republic of Yugoslavia.

2. Private persons may buy from the National Bank of the Federal People's Republic of Yugoslavia foreign instruments of payment needed for education, specialized training, medical treatment and purchase of medicine, regardless of whether the entire, or only partial, amount of expenses is involved, on the basis of orders for payment issued by the republican councils, and out of the foreign currency appropriations approved to these councils.

3. The National Bank of the Federal People's Republic of Yugoslavia shall be authorized to issue technical instructions for the carrying out of this order.

4. This order shall take effect on the date of its publication in the "Sluzbeni list Federativne Narodne Republike Jugoslavije".

No. 8074
Belgrade, October 31, 1952

p.t.ó.

[fol. 77] Ministar of Finance of the FPRY
Mlentije Popovic

I, the undersigned Kiril Jaszenko, have been employed as a legal analyst in the Foreign Law Section of the Library of Congress, Washington, D. C., since January 15, 1952. I also was a practicing lawyer in Belgrade, Yugoslavia, and I have a thorough knowledge of the Serbo-Croatian and English languages.

I hereby certify that, to the best of my knowledge, the above is a correct and true translation of the Order Concerning the Amounts and Procedure for Sale of Foreign Instruments of Payment to Private Persons.

/s/ Kiril Jaszenko

Subscribed and sworn to before me this 8th day of Dec, 1955. at Washington, D.C.

/s/ Olive M. Seltzer
Notary public

My Commission Expires Aug. 31, 1956

(Seal)

[fol. 79]

Claimant's Exhibit 3

No. 1368

The Embassy of the United States of America presents its compliments to the Secretariat of State for Foreign Affairs of the Federative People's Republic of Yugoslavia and has the honor to inform the Secretariat that the Embassy has received from the Department of State at Washington a communication enclosing copies of two letters

directed to the Department by the Law Offices of Stahlman and Cooper and Blase A. Bnonpane, 920 Walter P. Story Building, 610 South Broadway, Los Angeles 14, California, who represent the estate of a decedent who at the time of his death was a resident of Los Angeles, California, and who left heirs in Yugoslavia. The letters referred to read in part as follows:

1. "Will you kindly advise us whether there is any treaty between the United States and Yugoslavia whereby the heirs have reciprocal rights of inheritance. In other words, do we have an arrangement with Yugoslavia wherein there is a reciprocal right on the part of citizens of the United States to take real and personal property originating from the estates of persons dying in Yugoslavia upon the same terms and conditions as the residents of Yugoslavia would have.

2. "In further reference to our letter to you, dated June 10, 1952, and to your kind reply thereto of July 10, 1952, signed by Francis E. Flaherty, Assistant Chief, Division of Protective Services, enclosing copies of communications from the Republic of Yugoslavia dated October 9, 1948 and July 22, 1949, in connection with the above estate, we would like to inquire of there have been any changes or revisions in the laws mentioned above as affecting the reciprocal rights of inheritance of citizens of the United States and of the Republic of Yugoslavia.

3. "In your letter of July 10, 1952, you stated that there was some question at that time, from an analysis of the decree of March 20, 1948, as to whether a citizen of the United States could inherit real property in Yugoslavia. We would appreciate any further advice on this subject as we notice that the aforementioned [fol. 80] decree of Yugoslavia restricts the inheritance of real property by alien heirs to those who are also natural heirs of the deceased. According to the judicial interpretation of American courts, natural heirs include only sons and daughters and parents as distinguished from collateral heirs which comprise brothers and sisters, etc. Does the Yugoslav law adhere the this

same interpretation or does it consider all heirs as natural heirs regardless of the degree of consanguinity?"

It is assumed by the Embassy, in view of the first two paragraphs of Article II of the Convention of Commerce and Navigation which is now in force between the United States and Yugoslavia and which was signed with Serbia on October 2-14, 1881, and in view of a communication (copy attached) which the Supreme Court of the Federative People's Republic of Yugoslavia directed to the Ministry of Justice of the FPRY on August 18, 1949, that American citizens have full rights of inheritance in the FPRY. It does not appear, however, in view of Note No. 530240 (copy attached) which the Yugoslav Ministry of Foreign Affairs directed to the Embassy on October 9, 1948, that American citizens are "at liberty to export freely the proceeds of the sale of their property and their goods in general" to the United States in accordance with the thirs paragraph of Article II of the Convention of Commerce and Navigation referred to above.

With regard to No. 2 above, it appears that there have been no changes or revisions, since October 9, 1948, in the laws and regulations concerning the rights of inheritance in Yugoslavia of citizens of the United States or in the restrictions, reffered to in the pefultimate paragraph of the Ministry's note of October 9, 1948, on their "liberty to export freely the proceeds of the sale of their property and their goods in general" to the United States.

With regard to No. 3 above, it does not appear that the Embassy's files contain any information which would enable it to answer the question posed therein.

It would be greatly appreciated if the Secretariat of State for Foreign Affairs would be so kind as to inform the Embassy whether the latter may properly inform the [fol. 81] Department of State that, at the present time, American citizens:

1. May freely inherit property in Yugoslavia.

2. May freely sell inherited property and other property.

3. Are not "at liberty to export freely in the form of dollars the proceeds of the sale of their property and their goods in general."

It would also be appreciated if the Secretariat would supply the Embassy with the information concerning natural heirs requested in No. 3 above.

The Embassy avails itself of this opportunity to renew to the Secretariat of State for Foreign Affairs the assurance of its high consideration.

American Embassy,
Belgrade, May 21, 1953.

[fol. 82]

CLAIMANT'S EXHIBIT 4

No. 515370/53

The Secretariat of State for Foreign Affairs presents its compliments to the Embassy of the United States of America and, with regerence to the Embassy's Note No. 1368 of May 21, 1953, has the honor to communicate:

In accordance with the Convention of Commerce and Navigation concluded between the Kingdom of Serbia and the United States on October 2/14, 1881, and which is in force still today between the Federal People's Republic of Yugoslavia and the United States, as well as according to earlier information about the rights of the citizens of the United States in the FPRY with regard to inheritance, the Secretariat wishes to inform the Embassy that American citizens

1. May freely inherit property in Yugoslavia under the same conditions as Yugoslav citizens,

2. May sell inherited and other property under the same conditions as Yugoslav citizens, and

3. That the Yugoslav Government, pursuant to paragraph 3, Article II of the Agreement of 1881, settles favorably all the claims of American citizens, regarding the transfer of proceeds of the sale of their real property and their goods in general, to the United States.

In connection with the above exposed in paragraph 1 and 2, and with the view to clarifying some points when analysing the Decree of March 20, 1948, concerning the above-mentioned Agreement of 1881, the Federal Executive Council brought a binding interpretation of Art. II, on August 3, 1953, Official Gazette of the FPRY, No. 31 of August 12, 1953, reading as follows:

"On the basis of Art. 69, paragraph 1 of the Constitutional Law, and in connection with Art. 2, paragraph 1 of the Procedure, the Commission for the Interpretation of Laws of the National Assembly of the FPRY gives a binding interpretation of Art. II of the Convention of Commerce and Navigation, concluded between Serbia and the United

AMERICAN EMBASSY
B e l g r a d e

[fol. 83] States on October 2/14, 1881, and of Art. 5 of the Agreement on Pecuniary Claims of the United States and its citizens, concluded between the United States and the FPRY on July 19, 1948.

On the basis of Art. 5 of the Agreement on Pecuniary Claims of the United States and their Citizens, concluded between the United States and the FPRY on July 19, 1948, and the provision of Art. II of the Convention of Commerce and Navigation, concluded between Serbia and the United States on October 2/14, 1881, which is still in force, American citizens have the same rights as the citizens of the FPRY, with regard to the way and object of acquisition and disposition of personal as well as real property. Consequently, they have the right to inherit real property on the territory of the FPRY under the same conditions as the citizens of the FPRY, on the basis of the law, as well as on the basis of a last will, regardless of the provizion of Art. 3, paragraph 1, of the Decree on the Control of Real Property, of March 20, 1948.

No. 76, Beograd, August 3, 1953, Commission for the Interpretation of Laws of the National Assembly of the FPRY.

There have been no changes in the position regarding the order of succession as expesed in the communication

of the Supreme Court of the FPRY directed to the Ministry of Justice of the FPRY on August 18, 1949.

In order to clarify this point, the Secretariat would like to inform that the Yugoslav law does not know a special kind of natural heirs, but only the order of succession on the basis of the law, or inheritance by testament.

The order of succession on the basis of the Law is exposed in the explanation of the Supreme Court of the FPRY.

In connection with point 3 of the above mentioned position, the Secretariat wishes to point out that according to Yugoslav foreign exchange regulations, an application for the permit of a free transfer of all monetary means should be submitted in each individual case. The Secretariat wishes also to stress, that these regulations concerning foreign exchange are not in contradiction with the [fol. 84] Convention of 1881, since the claims of American citizens for the transfer of proceeds of the sale of their property and their goods in general are settled favorably by the competent authorities pursuant to paragraph 3, Art. II of the Agreement of 1881.

The Secretariat of State for Foreign Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurance of its high consideration.

Beograd, October 21, 1953.

[fol. 85]

CLAIMANT'S EXHIBIT 5

I, Frane Frol, Minister of Justice od the Federal People's Republic of Yugoslavia, hereby certify that I am a Member of the Government of the Federal People's Republic of Yugoslavia, entrusted with and having custody of the State seal as well as of the original Constitution and laws of the Federal People's Republic of Yugoslavia and who is in charge of their implementation. I hereby attest that according to the Law and practice of the courts in the Federal People's Republic of Yugoslavia the citizens of the United States of America may inherit in the Federal People's Republic of Yugoslavia personal property under the same conditions and same juridical titles (law, will etc.)

as the citizens of the Federal People's Republic of Yugoslavia. As to real property the citizens of the United States of America may inherit in the Federal People's Republic of Yugoslavia by law on the grounds of Art. 5 of the Decree [fol. 86] on the control of real property of March 20, 1948 and by will on the grounds of diplomatic reciprocity in accordance with Art. 5 of the Agreement between the United States of America and the Federal People's Republic of Yugoslavia of July 19, 1948, both by national treatment and by the most favored nation clause.

Done in Belgrade, July 13, 1949.

/s/ Frane Frol

[fol. 87]

Claimant's Exhibit 6

Supreme Court
of the
Federal People's Republic
of Yugoslavia

Su. No. 505/49
Belgrade, August 18, 1949.

To the

Ministry of Justice of FPRY

Belgrade

With reference to your letter No. 235/49 of August 16, 1949, and in reply to questions set forth therein: what is the judiciary practice in the territory of the FPRY, and particularly in the territory of the PR of Serbia and PR of Croatia, regarding inheritance right, and whether the courts recognize to foreign citizens the right of inheritance on the basis of the Law, particularly to citizens of the United States of America, and whether the legal rule from paragraph 423 of the Serbian Civil Code of 1844 is in force—we state the following:

In the procedure and settlement of inheritance cases the courts are guided by Art. 4 of the Law pertaining to nonvalidity of legal prescriptions promulgated prior to April 6, 1941 and durang the enemy occupation. On the basis of

this prescription courts are authorized to apply even now certain rules of the laws which were in force up to April 6, 1941, insofar as they are not contrary to the Constitution of the FPRY, to the Constitutions of the peoples republics, to the laws and other prescriptions in force which were promulgated by the competent organs of the new state, as well as to the principles of the constitutional system of the Federal People's Republic of Yugoslavia and her republics. [fol. 88] Courts in the territory of the FPRY, consequently also courts in the territory of the people's republic of Serbia and territory of the people's republic of Croatia, from 1945 have applied and are applying today the following regulations:

1) *Regarding the right of inheritance*

One may inherit on the basis of the law or a will. If the deceased did not leave a will the following persons are entitled, on the basis of the law, to inherit:

In the first place the sons, daughters and spouse of the deceased on an equal basis. The descendants of deceased sons and/or daughters inherit by right of representation. If there are no such close relatives, then the estate will be inherited by the parents of the deceased on an equal basis. If there is no living parent then his share is inherited by his sons and daughters, brothers and sisters of the deceased, on an equal basis, and if any of the brothers and/or sisters died before the deceased their share goes to his/her sons and daughters.

If none of the above mentioned relatives are living, then the estate is inherited by the grandfather and grandmother on the father's side, and the grandfather and the grandmother on the mother's side on an equal basis, and if any grandparent is not living then his share is inherited by his sons and daughters on an equal basis. But if some of these sons or daughters died before the deceased then his her share will be inherited by his/her sons and daughters.

2) *Regarding the question of inheritance by foreign citizens*

Foreign citizens inherit in the FPRY under the condition of reciprocity, consequently citizens of the United States of America as well.

The legal rule from paragraph 423 of the Serbian Civil Code; which is in force, states:

"When, how, and which foreign citizens can inherit goods [fol. 89] of a Serbian citizen, is based on the political relations with the foreign states and according to them inheritances will be determined and decisions brought."

Death to Fascism—Liberty to the People!

President,
Vitomir Petrovic (signed)

Seen by the Ministry of Foreign Affairs as a true copy of the text in the Serbo-Croat language.

The fee of Din. gratis has been received according to article 5/1 of the Tariff Law.

No 54127

February 1, 1950
Belgrade

Chief of Legalization
(Tadic Radivoje) signed

Seal of the
Ministry of Foreign Affairs

This is to certify that the above is a true translation from the Serbo-Croat language into English.—

Counselor of the Embassy,
/s/ Mirko Sardelic
Mirko Sardelic.

[Seal]

Yugoslav Embassy
Washington

Official.
A.Br.2129/50
Washington, D. C.,
February 7, 1950.

[fol. 90]

CLAIM EXHIBIT 7

AGREEMENT BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA REGARDING PECUNIARY CLAIMS OF THE UNITED STATES AND ITS NATIONALS

The Government of the United States of America and the Government of the Federal People's Republic of Yugoslavia, being desirous of effecting an expeditious and equitable settlement of claims of the United States of America and of its nationals against Yugoslavia, have agreed upon the following articles:

Article 1

(a) The Government of Yugoslavia agrees to pay, and the Government of the United States agrees to accept, the sum of $17,000,000 United States currency in full settlement and discharge of all pecuniary claims of the Government of the United States against the Government of Yugoslavia, other than those arising from Lend-Lease and civilian supplies furnished as military relief, arising between September 1, 1939 and the date hereof, and in full settlement and discharge of all claims of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property and of rights and interests in and with respect to property, which occurred between September 1, 1939 and the date hereof.

* * * * * * *

[fol. 91]

Article 5

The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded

to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881.[1]

* * * * * * *

[fol. 92]

Article 11

The Government of Yugoslavia agrees to give sympathetic consideration to applications for transfers to the United States of deposits in banks of Yugoslavia and other similar forms of capital owned by nationals of the United States, where the amounts involved are small but which, in view of the circumstances, are of substantial importance to the persons requesting the transfers.

Article 12

The present Agreement shall come into force and effect upon the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at Washington in duplicate this nineteenth day of July, 1948.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

G C MARSHALL
Secretary of State
of the United States of America

FOR THE GOVERNMENT OF THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA:

OBREN BLAGOJEVIC
Deputy Minister of Finance
of the Federal People's Republic of Yugoslavia

[1] Treaty Series 319; 22 Stat. 963.

[fol. 93]

CLAIMANT'S EXHIBIT 9

SERBIA—COMMERCIAL RELATIONS.

CONVENTION

BETWEEN

THE UNITED STATES OF AMERICA AND SERBIA,

FOR FACILITATING AND DEVELOPING COMMERCIAL RELATIONS.

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* * * * * * *

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas, a Treaty between the United States of America and His Highness the Prince of Serbia, for facilitating and developing the commercial relations established between the two countries, was concluded and signed at Belgrade by their respective plenipotentiaries on the 2/14 day of October, 1881, the original of which treaty, being in the English and Serbian languages, is word for word as follows:

[*The following is the English version.*]

TREATY OF COMMERCE BETWEEN THE UNITED STATES OF AMERICA AND SERBIA.

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named as their respective plenipotentiaries, viz:

The United States of America, Eugene Schuyler, their chargé d'affaires and consul-general at Bucarest;

His Highness the Prince of Serbia, Monsieur Ched. Mijatovitch, His Minister of Foreign Affairs, Grand Officer of His Order of Takova, &c., &c., &c.,

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

* * * * * * *

[fol. 94] ARTICLE II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

ARTICLE III.

Merchants, manufacturers, and trades people in general of one of the two contracting countries traveling in the other, or sending thither their clerks and agents—whether with or without samples—in the exclusive interest of the commerce or industry that they carry on, and for the purpose of making purchases or sales or receiving commissions, [fol. 95] shall be treated with regard to their licenses, as the merchants, manufacturers and trades people of the most favored nation.

* * * * * * *

ARTICLE IV.

Citizens of the United States in Serbia and Serbian subjects in the United States shall be reciprocally exempted from all personal service, whether in the army by land or by sea; whether in the national guard or militia; from billeting; from all contributions, whether pecuniary or in kind, destined as a compensation for personal service; from all forced loans, and from all military exactions or requisitions. The liabilities, however, arising out of the possession of real property and for military loans and requisitions to which all the natives might be called upon to contribute as proprietors of real property or as farmers, shall be excepted.

They shall be equally exempted from all obligatory official, judicial, administrative or municipal functions whatever.

They shall have reciprocally free access to the courts of justice on conforming to the laws of the country, both for the prosecution and for the defence of their rights in all the degrees of jurisdiction established by the laws. They can employ in every case advocates, lawyers and agents of all classes authorized by the law of the country, and shall enjoy in this respect, and as concerns domiciliary visits to their houses, manufactories, warehouses or shops, the same rights and advantages as are or shall be granted to the natives of the country, or to the subjects of the most favored nation.

* * * * * * *

[fol. 95a] ARTICLE VII.

The products of the soil or of the industry of Serbia which shall be imported into the United States of America, and the products of the soil or of the industry of the United States which shall be imported into Serbia, and which shall be destined for consumption in the country, for warehousing, for re-exportation or for transit, shall be subjected to the same treatment, and shall not be liable to other or higher duties than the products of the most favored nation.

* * * * * * *

[fol. 96] Done in duplicate at Belgrade this 2-14 day of October, 1881.

EUGENE SCHUYLER. [SEAL.]
CH. MIJATOVICH. [SEAL.]

And whereas the said treaty has been duly ratified on both parts, and the respective ratifications were exchanged at Belgrade on the 15th ultimo:

Now, therefore, I, Chester A. Arthur, President of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

[fol. 97] In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and seventh.

CHESTER A. ARTHUR.

[SEAL.]

By the President:

FRED'K T. FRELINGHUYSEN,
Secretary of State.

[fol. 97a]

CLAIMANT'S EXHIBIT 10

ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND

* * * * * * *

[fol. 98] ARTICLE IV

PAR VALUES OF CURRENCIES

* * * * * * *

[fol. 99] Section 3. *Foreign exchange dealings based on parity*

The maximum and the minimum rates for exchange transactions between the currencies of members taking place within their territories shall not differ from parity.

(i) in the case of spot exchange transactions, by more than one percent; and

(ii) in the case of other exchange transactions, by a margin which exceeds the margin for spot exchange transactions by more than the Fund considers reasonable.

Section 4. *Obligations regarding exchange stability*

(a) Each member undertakes to collaborate with the Fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

(b) Each member undertakes, through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under Section 3 of this Article. A member whose monetary authorities, for the settlement of international transactions, in fact freely buy and sell gold within the limits prescribed by the Fund under Section 2 of this Article shall be deemed to be fulfilling this undertaking.

* * * * * * *

[fol. 100]

Article VI

Capital Transfers

Section 1. *Use of the Fund's resources for capital transfers*

(a) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund.

(b) Nothing in this Section shall be deemed

(i) to prevent the use of the resources of the Fund for capital transactions of reasonable amount required for the expansion of exports or in the ordinary course of trade, banking or other business, or

(ii) to affect capital movements which are met out of a member's own resources of gold and foreign exchange, but members undertake that such capital movements will be in accordance with the purposes of the Fund.

. . . . . .

[fol. 101] Section 3. *Controls of capital transfers*

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3 (b), and in Article XIV, Section 2.

Article VII

Scarce Currencies

Section 1. *General scarcity of currency*

If the Fund finds that a general scarcity of a particular currency is developing, the Fund may so inform members and may issue a report setting forth the causes of the scarcity and containing recommendations designed to bring it to an end. A representative of the member whose currency is involved shall participate in the preparation of the report.

. . . . . .

[fol. 102] Section 3. *Scarcity of the Fund's holdings*

(a) If it becomes evident to the Fund that the demand for a member's currency seriously threatens the Fund's ability to supply that currency, the Fund, whether or not it has issued a report under Section 1 of this Article, shall formally declare such currency scarce and shall thenceforth apportion its existing and accruing supply of the scarce currency with due regard to the relative needs of members, the general international economic situation and any other pertinent considerations. The Fund shall also issue a report concerning its action.

(b) A formal declaration under (a) above shall operate as an authorization to any member, after consultation with the Fund, temporarily to impose limitations on the freedom of exchange operations in the scarce currency. Subject to the provisions of Article IV, Sections 3 and 4, the member shall have complete jurisdiction in determining the nature of such limitations, but they shall be no more restrictive than is necessary to limit the demand for the scarce currency to the supply held by, or accruing to, the member in question; and they shall be relaxed and removed as rapidly as conditions permit.

Article VIII

General Obligations of Members

Section 1. *Introduction*

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2. *Avoidance of restrictions on current payments*

(a) Subject to the provisions of Article VII, Section 3 (b), and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

[fol. 103] (b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

[fol. 104] ARTICLE XIV

TRANSITIONAL PERIOD

Section 2. *Exchange restrictions*

In the post-war transitional period members may, notwithstanding the provisions of any other article of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund.

Section 4. *Action of the Fund relating to restrictions*

Not later than three years after the date on which the Fund begins operations and in each year thereafter, the Fund shall report on the restrictions still in force under Section 2 of this Article. Five years after the date on which the Fund begins operations, and in each year thereafter, any member still retaining any restrictions inconsistent with Article VIII, Sections 2, 3, or 4, shall consult the Fund as to their further retention. The Fund may, if it deems such action necessary in exceptional circumstances, make representations to any member that conditions are favorable for the withdrawal of any particular restriction, or for the general abandonment of restrictions, inconsistent with the provisions of any other articles of

this Agreement. The member shall be given a suitable time to reply to such representations. If the Fund finds that the member persists in maintaining restrictions which are [fol. 105] inconsistent with the purposes of the Fund, the member shall be subject to Article XV, Section 2 (a).

Section 5. *Nature of transitional period*

In its relations with members, the Fund shall recognize that the post-war transitional period will be one of change and adjustment and in making decisions on requests occasioned thereby which are presented by any member it shall give the member the benefit of any reasonable doubt.

Article XV

Withdrawal From Membership

* * * * * * *

Section 2. *Compulsory withdrawal*

(a) If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the resources of the Fund. Nothing in this Section shall be deemed to limit the provisions of Article IV, Section 6, Article V, Section 5, or Article VI, Section 1.

(b) If, after the expiration of a reasonable period the member persists in its failure to fulfill any of its obligations under this Agreement, or a difference between a member and the Fund under Article IV, Section 6, continues, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the governors representing a majority of the total voting power.

* * * * * * *

[fol. 106]

Article XIX

Explanation of Terms

In interpreting the provisions of this Agreement the Fund and its members shall be guided by the following:

* * * * * * *

[fol. 107] (i) Payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitation:

(1) All payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;

(2) Payments due as interest on loans and as net income from other investments;

(3) Payments of moderate amount for amortization of loans or for depreciation of direct investments;

(4) Moderate remittances for family living expenses.

The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

* * * * * * *

[fol. 108]

CLAIMANT'S EXHIBIT 17-A

I, Veljko Zekovic, Secretary of the Federal Executive Council, hereby confirm that I am a member of the Federal Executive Council, entrusted with and having custody of the original Constitution and Laws of the Federal People's Republic of Yugoslavia. I hereby attest that the attached text of the Binding interpretation of Article 2 of the Treaty of Commerce and Navigation between Serbia and the United States of America, concluded on October 2 14, 1881, and of Article 5 of the Agreement between the Governments of the United States of America and the Federal People's Republic of Yugoslavia regarding the Pecuniary Claims of the United States of America and its Citizens, concluded on July 19, 1948, is a true, complete and correct copy of the original, and that this Binding interpretation is still now in full force and effect.

Done with my hand and under the official seal of the Federal Executive Council, in the City of Beograd, on November 20, 1953.

Secretary
of the Federal Executive
Council

sgd Veljko Zekovic.

[fol. 109] According to Article 69, paragraph 1 of the Constitutional Law, and in connection with Article 2, point 1 of the Proceedings, the Commission for the Interpretation of the Laws of the People's Assembly of the Federal People's Republic of Yugoslavia gives the

BINDING INTERPRETATION
OF ARTICLE II OF THE TREATY OF COMMERCE AND NAVIGATION BETWEEN SERBIA AND THE UNITED STATES OF AMERICA, CONCLUDED ON OCTOBER 2/14 1881, AND ARTICLE 5 OF THE AGREEMENT BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA REGARDING PECUNIARY CLAIMS OF THE UNITED STATES OF AMERICA AND ITS CITIZENS, CONCLUDED ON JULY 19, 1948.

According to Article 5 of the Agreement between the Governments of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States of America and its Citizens, concluded on July 19, 1948, and the provisions of Article II of the Treaty of Commerce and Navigation between Serbia and the United States of America, concluded on October 2/14, 1881, which is still in force, citizens of the United States of America are equal with citizens of the Federal People's Republic of Yugoslavia in regard to the manner and object of acquiring and disposing of both personal and real property. Accordingly, they have the right to inherit real property in the territory of the Federal People's Republic of Yugoslavia under the same con-

ditions as citizens of the Federal People's Republic of Yugoslavia on the basis of the Law as well as on the basis of a Testament, regardless of the provision of Article 5, paragraph 1 of the Decree regarding the Control of the transfers of Real Property of March 20, 1948.

No. 76
August 3, 1953
Beograd

Commission for the Interpretation of the Laws of the People's Assembly of the Federal People's Republic of Yugoslavia

Secretary,
sgd Rista Antunovic,
People's Deputy

President
sgd Dr. Maks Snuderl,
People's Deputy

That the within is a true copy
certifies:
sgd Nikola Srzentic

[fol. 110]

CLAIMANT'S EXHIBIT 17-B

I, Veljko Zekovic, Secretary of the Federal Executive Council, hereby confirm that I am a member of the Federal Executive Council, entrusted with and having custody of the original Constitution and Laws of the Federal People's Republic of Yugoslavia. I hereby attest that the attached text of the Decision of the People's Assembly of the Federal People's Republic of Yugoslavia regarding the confirmation of binding interpretations of the Commission for the Interpretation of the Laws of the Federal People's Republic of Yugoslavia, enacted in the period between May 20 and September 7, 1953, is a complete and correct copy of the original.

Done with my hand and under the official seal of the Federal Executive Council, in the City of Beograd, on November 20, 1953.

Secretary
of the Federal Executive
Council

sgd Veljko Zekovic.

[fol. 111] DECISION

OF THE PEOPLE'S ASSEMBLY OF THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA CONFIRMING THE BINDING INTERPRETATIONS OF THE COMMISSION FOR THE INTERPRETATION OF THE LAWS OF THE PEOPLE'S ASSEMBLY OF THE FPRY, ISSUED IN THE PERIOD BETWEEN MAY 20th AND SEPTEMBER 7th, 1953.

According to Article 60 paragraph 3 of the Constitutional Law, the People's Assembly of the FPRY, at its XXVIIIth joint meeting held at the VI regular session (Second Assembly) on September 8, 1953, reached a decision which reads as follows:

The binding interpretations of the Commission for the Interpretation of the Laws of the People's Assembly of the FPRY issued in the period between May 20 and September 7, 1953, are confirmed as follows:

1) Binding interpretations of Articles 19 and 23 of the Law regarding Disabled War Veterans;

2) Binding interpretation of Article 27, paragraph 1 of the Law regarding the Agricultural Land Fund of People's Property and the Attribution of Land to Agricultural Organizations;

3) Binding interpretation of Article 1, paragraph 1 of the Law regarding the Office of the Solicitor General;

4) Binding interpretation of Article II of the Treaty of Commerce and Navigation between Serbia and the United States of America, concluded on October 2/14, 1881, and Article 5 of the Agreement between the Governments of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the

United States of America and its Citizens, concluded on July 19, 1948.

No. 281
November 3, 1953
Beograd

People's Assembly
of the
Federal People's Republic of Yugoslavia

President
of the Assembly of Nationalities
sgd Josip Vidmar

President
of the Federal Assembly
sgd Vladimir Simic

That the within is a true copy
certifies:

sgd Nikola Srzentic

[fol. 112]

CLAIMANT'S EXHIBIT 19

I, Veljko Zekovic, Secretary of the Federal Executive Council, hereby confirm that I am a member of the Federal Executive Council, entrusted with and having custody of the original Constitution and Laws of the Federal People's Republic of Yugoslavia. I hereby attest that the attached text of Article 2 paragraph 1 of the Proceedings of the Commission for the Interprefation of the Laws is a true, complete and correct copy of the original, that this regulation has been in effect since its publication in the Official Gazette of the Federal People's Republic of Yugoslavia on April 8, 1953, and that is still now in full force and effect.

Done with my hand and under the official seal of the Federal Executive Council, in the City of Beograd, on November 20, 1953.

Secretary
of the Federal Executive
Council

sgd Veljko Zekovic.

Art. 2

The Commission for the Interpretation of the Laws:

1) gives binding interpretations of the federal laws;

2) examines the proposals for the ascertainment of the conformity of the federal law and law of the republic with the federal Constitution and gives its opinion;

3) gives its opinion in cases where an act of the Federal Executive Council is not in conformity with the law, and

4) gives its opinion in cases of disagreement between the Executive Council of a people's republic and the Federal Executive Council concerning the suspensibility of acts of the Executive Council of a people's republic.

That the within is a true copy
certifies

sgd Nikola Srzentic

[fol. 114]

CLAIMANT'S EXHIBIT 20

I, Veljko Zekovic, Secretary of the Federal Executive Council, hereby confirm that I am a member of the Federal Executive Council, entrusted with and having custody of the original Constitution and Laws of the Federal People's Republic of Yugoslavia. I hereby attest that the attached text of Article 69 of the Constitutional Law pertaining to the Bases of the Social and Political Order of the Federal People's Republic of Yugoslavia and the Federal Organs of Authority is a true, complete and correct copy of the original, that this Article has been in effect since the promulgation of the mentioned Constitutional Law in the National Assembly of the Federal People's Republic of Yugoslavia on July 13, 1953, and that still now is in full force and effect.

Done with my hand and under the official seal of the Federal Executive Council, in the City of Beograd, on November 20, 1953.

Secretary
of the Federal Executive
Council

sgd Veljko Zekovic.

[fol. 115] CONSTITUTIONAL LAW
PERTAINING TO THE BASES OF THE SOCIAL AND POLITICAL ORDER OF THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA AND THE FEDERAL ORGANS OF AUTHORITY

Art. 69

The Commission for the Interpretation of the Laws is entitled to give binding interpretations of federal laws.

The proposal for the interpretation of laws may be submitted by: any people's deputy, a Committee of a House, the Federal Executive Council, the Federal Supreme Court and the Executive Council of the people's republic.

The Commission submits to the competent Houses the binding interpretation for subsequent approval.

The Commission examines the proposals submitted to the Assembly for ascertainment of the conformity of the federal law and the law of the republic with the federal Constitution and submits a report to the Houses together with its opinion.

The Commission for the Interpretation of the Laws consists of nine members, who are elected by the Assembly at the joint sessions of both Houses from the ranks of the people's deputies.

The Commission for the Interpretation of the Laws remains on duty also after the dissolution of the Assembly until the election of a new commission.

That the within is a true copy
certifies

sgd Nikola Srzentic.

[fol. 116]

CLAIMANT'S EXHIBIT 26

Federal People's Republic of Yugoslavia
Federal People's Assembly
Federal Executive Council
No. 592
November 28, 1955
Beograd

On the request of the Consulate General of the Federal People's Republic of Yugoslavia in San Francisco, the Secretariat for Juridical Affairs issues the following

CERTIFICATE

In the Federal People's Republic of Yugoslavia is in force the Decision of the Federal Executive Council concerning the transfer of authority relative to the issuance of orders for transmittal of inheritances from the Federal People's Republic of Yugoslavia to United States of America, published in the Official Gazette October 26, 1955,— number 47 of the Federal People's Republic of Yugoslavia. The Decision reads as follows:

1). The Federal Secretary of State for General Administration and Budget has authority to issue orders for the transmittal from the F.P.R. of Yugoslavia to the U.S.A. of funds realized upon liquidation of decedents' estates.

2). The Federal Secretary of State for General Administration and Budget shall continue to order the transmittal from the F.P.R. of Yugoslavia to the U.S.A. of funds realized from the liquidation of decedents' estates upon establishing that such transmittal devolves from an inheritance due to a citizen of the U.S.A. and that such transmittal has been requested by the party within three years from the effective date of the decree of distribution.

3). This Decision becomes effective as of the day of its publication in the Official Gazette of the F.P.R. of Yugoslavia.

The Head of Department
signed Mihailo Vrazalic

[fol. 117]

CLAIMANT'S EXHIBIT 28.

Article 8

The term "foreign exchange regulations" refers to the provisions of the present Law, to the provisions of the Rules for the implementation of the present Law, to the orders, instructions and decisions of the Ministry of Finance of the FPR of Yugoslavia, made on the basis of the present Law, to all the regulations relating to the control of imports and exports enacted by the Minister of Foreign Trade of the FPR of Yugoslavia, as well as to the provisions of agreements with foreign countries which are concerned with payments.

[fol. 118]

STATE'S EXHIBIT 30

Federal People's Republic
of Yugoslavia

FEDERAL PEOPLE'S ASSEMBLY

FEDERAL EXECUTIVE COUNCIL
No. 332

13 maj 1956—Beograd

SECRETARIAT FOR JUSTICE

On the application of the General Consulate of the Federal People's Republic of Yugoslavia in San Francisco, the Secretariat for Justice of Federal Executive Council issues the following

CERTIFICATE

In the Federal People's Republic of Yugoslavia are in force:

I

The Law regulating foreign payments (Foreign Exchange Law) published in the "Official Gazette of the FPR of Yugoslavia No. 86 of October 23, 1946," corrected and changed on the 8th October 1951 ("Official Gazette of the

FPR of Yugoslavia" No. 46/1951) and on the 26th January 1954 ("Official Gazette of the FPR of Yugoslavia" No. 5/1954) which reads as follows:

Law
Regulating Foreign Payments (Foreign Exchange Law)

General provisions

Article 1

All foreign payments, as well as all foreign exchange [fol. 119] operations in the country and abroad likely to affect the balance of payments situation of our country and the international value of the domestic currency, are under the control of the Ministry of Finance of the FPR of Yugoslavia (foreign exchange control).

Article 2

The following operations are subject to special control:

a) All business transactions in the country and abroad involving foreign currency, claims and debts in foreign currency;

b) all business transactions with foreign countries involving domestic currency, claims and debts in domestic currency, and other values expressed in domestic currency;

c) all business transactions with foreigners in the country involving an alteration of property relations between our country and foreign countries; and

d) all domestic and foreign trade in precious metals (gold and platinum, with the platinum group: osmium, iridium, palladium, ruthenium, rhodium) in all forms, with the exception of products made of these metals.

Article 3

Legal transactions binding at least one of the parties to the actions enumerated in Articles 1 and 2 of the present Law are not valid, if not authorized by a permission issued [fol. 120] in conformity with Article 10 of the present law.

Article 4

It is prohibited to transact, in the country, any business in gold or to engage in business operations which would link the amount of the obligation in domestic currency to gold or any foreign currency.

Article 5

The term "transaction" under Articles 1 and 2 the present Law refers also, in addition to payments and to the transfer of valuables and precious metals, to the establishment, cancellation and alteration of obligations and actual rights to valuables and precious metals, as well as to the change of hands of the said rights and obligations.

Article 6

1. The term "foreign exchange", under the foreign exchange regulations, refers to all claims abroad, due under any count and in any currency, regardless of the manner of disposal (by check, bill of exchange, money-order, cable, order, telephone order, etc.).

2. The term "currency" under the foreign exchange regulations, refers to all sorts of effective foreign currency, except foreign gold coins, which are, under the present Law, considered as precious metal.

3. The term "values", under the foreign exchange regulations, refers to all sorts of securities.

[fol. 121]

Article 7

1. The term "foreigner", under the present Law, refers to all physical and legal persons residing or having their seat abroad, regardless of the nationality of the physical person.

2. The term "domestic persons" refers to all physical and legal persons residing or having their seat in the country, regardless of the nationality of the physical persons.

3. In cases under dispute the Banking and Currency Department of the Ministry of Finance of the FPR of

Yugoslavia will decide whether a given person is to be considered as a foreigner or a domestic person, under the present Law.

Article 8

The term "foreign exchange regulations" refers to the provisions of the present Law, to the provisions of the Rules for the implementation of the present Law, to the orders, instructions and decisions of the Ministry of Finance of the FPR of Yugoslavia, made on the basis of the present Law, to all the regulations relating to the control of imports and exports enacted by the Minister of Foreign Trade of the FPR of Yugoslavia, as well as to the provisions of agreements with foreign countries which are concerned with payments.

[fol. 122] Foreign Exchange Organs

Article 9

1. The Minister of Finance of the FPR of Yugoslavia is the highest foreign exchange State organ entrusted with the control of foreign exchange operations. He exercises this control through the Banking and Currency Department of the Ministry of Finance of the FPR of Yugoslavia, the Ministry of Foreign Trade and the National Bank—as foreign exchange organs and through persons possessing special permits—as auxiliary foreign exchange organs.

2. The delimitation of competences between the foreign exchange organs mentioned in paragraph 1 of the present Article in regard to the implementation of foreign exchange control is regulated by the Minister of Finance of the FPR of Yugoslavia by means of rules elaborated on the basis of Article 24 of the present Law, or by special decision.

Article 10

1. Only persons and institutions expressly provided, by the competent foreign exchange organs, either with a general permit or with a permit for a determined business, if such operations are not allowed by the foreign exchange

regulations, may engage under the present Law, in operations subject to foreign exchange control.

2. The Minister of Finance of the FPR of Yugoslavia can entrust the foreign exchange organs with the exclusive competence of dealing with various forms of foreign ex- [fol. 123] change operations.

3. The National Bank of the FPR of Yugoslavia in its capacity of foreign exchange organ may issue permits to individuals, institutions and auxiliary foreign exchange organs, both for engaging in certain foreign exchange operations and for exercising a certain foreign exchange control.

Article 11

The National Bank of the FPR of Yugoslavia may, when authorized by the Minister of Finance of the FPR of Yugoslavia, request, at any time, the owners in the country to offer for purchase any quantities of foreign exchange, currency, foreign securities and precious metals, fixing at the same time the conditions of purchase.

Article 12

When making decisions the competent foreign exchange organs are bound to take care both of a given branch of the economy as a whole, and of all the persons, institutions and enterprises participating in the given branch of economy. They are also bound to take into account the interests and economic possibilities of the people's republics.

Article 13

The foreign exchange organs and auxiliary organs are not responsible for any damage incurred by the parties as a result of the taking of decisions under the foreign exchange regulations.

[fol. 124]

Article 14

The foreign exchange organs and auxiliary organs are authorized, after having received the approval of the Min-

ister of Finance of the FPR of Yugoslavia, to charge the parties for the expenses incurred in connection with the implementation of controls under the present Law, in the form of compensations for expenditure, taxes and commissions.

Penalties

Article 15-23
(omitted)

Final provisions

Article 24

The Minister of Finance of the FPR of Yugoslavia is authorized to issue regulations, instructions, orders, and decisions for the purpose of implementing the present Law.

Article 25

The present Law will come into force on the eighth day after its publication in the "Official Gazette of the Federal People's Republic of Yugoslavia"

[fol. 125]

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

No. 71 287

In the Matter of the Estate of

JOE STOICH, Deceased.

ORDER DENYING PETITION FOR ESCHEAT AND DETERMINING DISTRIBUTION

This matter having come on regularly to be heard upon the Petition of the State of Oregon for Finding and Order of Escheat and upon Answer of Heirs to Petition of the State of Oregon for Finding and Order of Escheat on file

herein, the Honorable James W. Crawford, Circuit Judge, presiding, this case, the estates of Muharem Zekich, deceased, No. 71 702, and Marion Berosh, deceased, No. 71 316 of this Court, having been consolidated for hearing by stipulation of the parties because of the similarity of facts and the identity of the issues to be decided, the State of Oregon appearing by the Attorney General of Oregon by Catherine Zorn, Assistant Attorney General, the claimant heirs hereinafter named appearing through Branko Karadzole, Consul General of Yugoslavia at San Francisco, California, by Sinisa Kosutic, Consul of Yugoslavia, and Sava Temer, Consul of Yugoslavia, and by Peter A. Schwabe, their attorney, the Court having heard, received and considered the evidence submitted and having heard the arguments of counsel and the Court finding:

1. That the next of kin and heirs at law of the said Joe Stoich, deceased, hereinafter named were all at the time of his death in Portland, Oregon, on December 6, 1953, residents and nationals of the Federal People's Republic of Yugoslavia.

2. That as of the date and time of death of Joe Stoich, deceased, on December 6, 1953, there existed and now exist in Yugoslavia reciprocal rights upon the part of citizens of the United States to take real and personal property and the proceeds thereof by will or intestacy on the same terms and conditions as inhabitants and citizens of the country of Yugoslavia; that there then existed and now exist the rights of citizens of the United States to receive payment to them within the United States or its territories of moneys originating from the estates of persons dying within the country of Yugoslavia; and further that in the country of Yugoslavia, heirs, distributees, devisees or legatees may receive the benefit, use or control of money or [fol. 126] property from the estates of persons dying within the State of Oregon without confiscation, in whole or in part, by the government of said country of Yugoslavia; that therefore the requirements of Section 111.070 ORS have been fully met and the relatives, heirs and distributees above named are entitled to take and to receive distribution

of their inheritances from the estate of Joe Stoich, deceased.

3. That the next of kin and heirs at law of the said Joe Stoich, deceased, and the shares in which they are entitled to inherit and receive distribution of the clear proceeds of his estate are as follows:

Andja Kolovrat	sister	1/5
Drago Stojic	nephew	1/15
Dragica Sunjic	niece	1/15
Neda Turk	niece	1/15
(The children and all of the issue of a predeceased brother Mijo Stojic).		
Josip Buljan	nephew	1/5
(Only son and issue of a predeceased sister Joka Buljan, nee Stojic).		
Jure Zivanovic	nephew	1/5
(Only son and issue of a predeceased sister Mitija Zivanovic, nee Stojic).		
Mara Tolic	niece	1/10
Milan Stojic	nephew	1/10
(The children and all of the issue of a predeceased brother Ivan Stojic).		

residing at Prolozac, District of Imotski; Republic of Croatia, Yugoslavia.

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That the Petition of the State of Oregon for Finding and Order of Escheat filed herein by the State of Oregon, acting by and through the State Land Board, be and the same is hereby denied and dismissed.

2. That the next of kin and heirs at law of the said Joe Stoich are the sister, nieces and nephews hereinabove named, and that they are entitled to distribution of the clear distributable proceeds of this estate in the portions and fractions hereinabove set forth.

3. That upon the completion of the administration of this estate and the final settlement thereof distribution be

[fol. 127] made to and among the said next of kin and heirs at law of Joe Stoich, deceased, as hereinabove set forth.

Dated at Portland, Oregon, this 26th day of April, 1957.

James W. Crawford, Circuit Judge.

Approved as to form: Catherine Zorn, Assistant Attorney General of Oregon.

This day continued in Probate Court Journal number Seven hundred and Eighty Nine. (789)

[fol. 128]

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

No. 71 702

In the Matter of the Estate of

MUHAREM ZEKICH, Deceased.

ORDER DENYING PETITION FOR ESCHEAT AND DETERMINING DISTRIBUTION

This matter having come on regularly to be heard upon the Petition of the State of Oregon for Finding and Order of Escheat and upon Answer of Heirs to Petition of the State of Oregon for Finding and Order of Escheat on file herein, the Honorable James W. Crawford, Circuit Judge, presiding, this case, the estates of Joe Stoich, deceased, No. 71 287 and Marion Berosh, deceased, No. 71 316 of this Court, having been consolidated for hearing by stipulation of the parties because of the similarity of facts and identity of the issues to be decided, the State of Oregon appearing by the Attorney General of Oregon by Catherine Zorn, Assistant Attorney General, the claimant heirs hereinafter named appearing through Branko Karadzole, Consul General of Yugoslavia at San Francisco, California, by Sinisa Kosutic, Consul of Yugoslavia, and Sava Temer,

Consul of Yugoslavia, and by Peter A. Schwabe, their attorney, the Court having heard, received and considered the evidence submitted and having heard the arguments of counsel and the Court finding:

1. That the next of kin and heirs at law of the said Muharem Zekich, deceased, hereinafter named were all at the time of his death in Portland, Oregon, on December 17, 1953, residents and nationals of the Federal People's Republic of Yugoslavia.

2. That as of the date and time of death of said Muharem Zekich, deceased, on December 17, 1953, there existed and now exist in Yugoslavia reciprocal rights upon the part of citizens of the United States to take real and personal property and the proceeds thereof by will or intestacy on the same terms and conditions as inhabitants and citizens of the country of Yugoslavia; that there then existed and now exist the rights of citizens of the United States to receive payment to them within the United States or its territories of moneys originating from the estates of persons dying within the country of Yugoslavia; and further that in the country of Yugoslavia, heirs, distributees, devisees or legatees may receive the benefit, use or control [fol. 129] of money or property from the estates of persons dying within the State of Oregon without confiscation, in whole or in part, by the government of said country of Yugoslavia; that therefore the requirements of Section 111.070 ORS have been fully met and the relatives, heirs and distributees above named are entitled to take and to receive distribution of their inheritances from the estate of Muharem Zekich, deceased.

3. That the next of kin and heirs at law of the said Muharem Zekich, deceased, and the shares in which they are entitled to inherit and receive distribution of the clear proceeds of his estate are as follows:

Lutvo Zekic	brother	1/7
Ibro Zekic	brother	1/7
Habiba Turkovic	sister	1/7
Dzedja Popovac	sister	1/7

Sefko Muradbasic	nephew	1/14
Dika Muradbasic	niece	1/14
(Children and all the issue of Djuka Muradbasic, a predeceased sister)		
Murta Brkic	niece	1/7
(Child and all the issue of Nadjla Mehmedbasic, a predeceased sister)		
Milka Zekic	niece	1/21
Jasmina Zekic	niece	1/21
Rajka Zekic	niece	1/21
(Children and all the issue of Safet Zekic, a predeceased brother)		

residing at Stolac, Republic of Bosnia and Hercegovina, Yugoslavia

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That the Petition of the State of Oregon for Finding and Order of Escheat filed herein by the State of Oregon, acting by and through the State Land Board, be and the same is hereby denied and dismissed.

2. That the next of kin and heirs at law of the said Maharem Zekich are the brothers, sisters, nieces and nephews hereinabove named, and that they are entitled to distribution of the clear distributable proceeds of this estate in the portions and fractions hereinabove set forth.

3. That upon the completion of the administration of this [fol. 130] estate and the final settlement thereof distribution be made to and among the said next of kin and heirs at law of Maharem Zekich, deceased, as hereinabove set forth.

Dated at Portland, Oregon, this 26 day of April, 1957.

James W. Crawford, Circuit Judge.

Approved as to form: Catherine Zorn, Assistant Attorney General of Oregon.

[fol. 131]

IN THE SUPREME COURT OF THE STATE OF OREGON

Department 2

In the Matter of the Estate of

JOE STOICH, Deceased.

STATE LAND BOARD, Appellant,

v.

KOLOVRAT et al., Respondents.

In the Matter of the Estate of

MUHAREM ZEKICH, Deceased.

STATE LAND BOARD, Appellant,

v.

ZEKIC et al., Respondents

Appeals from Circuit Court, Multnomah County.

James W. Crawford, Judge.

Argued and submitted December 16, 1959.

Catherine Zorn, Assistant Attorney General, Salem, argued the cause for appellant. With her on the briefs was Robert Y. Thornton, Attorney General, Salem.

Peter A. Schwabe, Portland, argued the cause and filed a brief for respondents.

Before McAllister, Chief Justice, and Lusk, Warner and Sloan, Justices.

Reversed.

OPINION—January 13, 1960

WARNER, *J.*

We are presented with an appeal from decrees in the estates of Joe Stoich and Muharem Zekich, arising from

proceedings for escheat in each estate instituted by the [fol. 132] State Land Board, hereinafter referred to as the State:

Stoich died intestate in Multnomah county on December 6, 1953, leaving as his only heirs a sister, four nephews, and three nieces, all residents of Yugoslavia.

Zekich likewise died intestate in the same county on December 17, 1953, leaving as his only heirs two sisters, two brothers, two nephews, and three nieces, who are also residents of Yugoslavia.

All the heirs of each decedent are made parties defendant and appear therein by their attorneys in fact.

Because of the similarity of basic facts and questions of law common to both proceedings, the two matters were consolidated in the probate court for the purpose of trial and later consolidated in this court for the purpose of argument.

The position of the State is: that each decedent died without heirs or next of kin entitled to receive any part of his or her relative's estate. It premises its case upon ORS 111.070 (Oregon Laws 1951, ch. 519, § 1).

From orders denying the State's petitions for escheat and determining the right of the several defendants as alien heirs to take their respective distributive shares in the estates to which they lay claim, the State appeals.

This is the first appeal to reach this court from orders made pursuant to ORS 111.070, supra. Heretofore, all of the appeals in like matters had their origin in the earlier [fol. 133] counterpart to the present statute, namely, § 61-107, OCLA (Oregon Laws 1937, ch 399, § 1).[1]

ORS 111.070, the controlling statute, provides:

> "(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

[1] The provisions of § 61-107, OCLA, in their entirety will be found in State Land Board v. Rogers, —— Or ——, 347 P2d 57, decided December 2, 1959.

"(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

"(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

"(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

"(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

"(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property."

Speaking generally, the principal differences between the present statute and the former one dealing with the [fol. 134] rights of aliens to take inheritances in Oregon estates are: (1) the significant words "in like manner"[2] do not appear in ORS 111.070, supra, thereby making the reciprocal requirements of the statute read as does its California counterpart on that subject (West, Annotated California Probate Code, 528 § 259); (2) the present act embraces inheritances in real, as well as personal, property; and (3) adds, as an additional condition to the taking, subsection (c) of Section 1, requiring proof that foreign heirs

[2] See In re Estate of Krachler, 199 Or 448, 263 P2d 769, what is there said at pp 458 et seq. concerning the important significance of the words "in like manner," now deleted.

will receive their legacies without diminution by the government of the country where they claim citizenship.

The present act, as before, imposes on the alien nonresident heir the burden of proving the existence of the conditions precedent to qualifying one to take an inheritance in this state. These concurring conditions are: (1) that a reciprocal right existed as of the date of the decedent's death on the part of American citizens to take property from estates in the foreign country in which the alien resides, upon the same terms and conditions as the inhabitants and citizens of that foreign country; (2) that American citizens have the right to receive by payment to them within the United States moneys originating from estates in the foreign country; and (3) that the heirs and legatees in the foreign country will have the use, benefit and control of money or property originating from Oregon estates without confiscation by the foreign government.[3] Failure [fol. 135] to sustain the burden imposed upon alien heirs by the preponderance of evidence as to any one of these three items of proof of right results in defeating the claim of the alien to take under the statute. *In re Estate of Krachler*, 199 Or 448, 263 P2d 769; *State Land Board* v. *Rogers*, —— Or ——, 347 P2d 57, 59, decided December 2, 1959.

The defendant heirs claims to have met the burden in every particular.

ORS 111.070 is, as was its predecessor, § 61-107, OCLA, a law of succession, which governs the rights of nonresident aliens to take and receive property in the estate of an Oregon decedent. *In re Estate of Krachler*, supra (199 Or at 454); *In re Knutzen's Estate*, 41 Cal2d 573, 191 P2d 747, 751. The date of death controls the succession to the property and the three required rights under ORS 111.070,

[3] Because of the frequency of reference to the California statute, supra, the decisions made in the instant appeal and our earlier decisions, we note that the California statute is unlike the current Oregon act in two noteworthy particulars: (1) it does not require evidence of the right of an American citizen to receive payment from a foreign estate in this country; or (2) proof that an alien heir to an estate in the United States will receive money from an estate here without diminution by acts of the government of the alien heir. See § 259 of California Probate code, supra.

supra, must be shown to have so existed under the law of the country of the alien claimant as of that date. *In re Estate of Krachler*, supra, (199 Or at 453); *State Land Board* v. *Rogers*, supra (347 P2d at 61).

The "rights" of which we speak, as employed in the current statute, have been defined to mean an unqualified right, enforceable at law. *In re Estate of Krachler*, supra (199 Or at 455, 457 and 502), and "definitely ascertainable." *In re Arbulich's Estate*, 41 Cal2d 86, 257 P2d 433, 439. These definitions exclude the concept of a right which may in any sense be limited or dependent upon an act of discretion or grace upon the part of any governmental authority or agency.

We have also held that the second right, i.e., the right to receive, means delivery of the proceeds of an inheritance [fol. 136] from a foreign estate, not in the country where the foreign decedent left property, but a delivery to an Oregon heir in the United States or its territories, originated and implemented by some one authorized to make distribution and delivery of inheritances to the decedent's Oregon heir. *State Land Board* v. *Rogers*, supra. Moreover, the second right is not reciprocal in character; that is to say, it is not dependent upon the existence of a law of the foreign country that the alien heirs and nationals of that foreign country who take from an Oregon estate must receive delivery of their Oregon legacy within the territory of that country. It is only the "right to take" which must be reciprocal in character. *State Land Board* v. *Rogers*, supra (347 P2d at 60).

In determining this appeal, we find it only necessary to address ourselves to the question of the existence or nonexistence of the second right under the Yugoslavian law; that is, whether there is a certain and enforceable right vested in American citizens to receive the proceeds of a Yugoslavian inheritance in this country.

At the outset, we note that the defendants have placed much in the record concerning laws, regulations and customs prevailing in Yugoslavia at the time of the trial (April, 1957) which may have come into existence subsequent to December, 1953 (the crucial date for the determination of the rights of the Yugoslavian heirs to take the estates involved in this proceeding). It is, therefore, not

always clear to us whether all of the given matter reflected by approximately 85 documents apply to things existing in December, 1953, or to matters arising thereafter. This is well exemplified with reference to the current Article 8 of the Yugoslavian Foreign Exchange Law upon which the [fol. 137] defendants rest no small part of their argument, and to which we will later make fuller reference.

The exchange laws and regulations of a given country have been recognized or treated as conclusively determinative of an Oregon citizen's right to receive his inheritance "within the United States or its territories." *In re Estate of Krachler*, supra (199 Or at 478); *State Land Board* v. *Rogers*, supra (347 P2d at 61).

The Yugoslavian Law Regulating Foreign Payments (Foreign Exchange Law), hereinafter referred to as the Law, as it was in 1947, and being the Law of Foreign Exchange as adopted in 1945, is set out in substantial entirety in *In re Arbulich's Estate*, supra (257 P2d at 438-439).[1]

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[1] The pertinent articles of the Foreign Exchange Law, as disclosed in In Re Arbulich's Estate, supra (257 P2d at 438-439) read:

"Article 1

"All financial transactions with foreign countries, as well as all transactions within the country in relation to foreign countries that may affect the development of the credit balance of our country and the international value of our domestic currency (foreign exchange transactions) are subject to the control of the Federal Minister of Finance (foreign exchange control).

"Article 2

"Primarily the following transactions are subject to control:

"(a) All transactions within the country and with foreign countries: in foreign exchange, claims and debts in foreign currency and other values in foreign currency;

"(b) All transactions with foreign countries: in domestic currency, credits and debits in domestic currency and other values in domestic currency;

"(c) All transactions with foreigners within the country, causing changes in property relations between our country and foreign countries; and • • •

"Article 3

"The term *transaction* from Articles 1 and 2 as used in this law means the transfer of values and metals and payments, it also means the establishment, cancellation and change of obligations

[fol. 138] Since 1945 it is evident from the following recital in the certificate accompanying Exhibit 30 that the Law was amended in 1946, 1951 and 1954. This certificate reads:

> "In the Federal People's Republic of Yugoslavia are in force:
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> "I
>
> "The Law regulating foreign payments (Foreign [fol. 139] Exchange Law) published in the 'Official Gazette of the FPR of Yugoslavia No. 86 of October 23, 1946,' corrected and changed on the 8th October 1951 ('Official Gazette of the FPR of Yugoslavia' No. 46/1951) and on the 26th January 1954 ('Official Gazette of the FPR of Yugoslavia' No. 5/1954) which reads as follows: * * *."

Notwithstanding this element of uncertainty as to what precisely was the Foreign Exchange Law in December, 1953, in contrast to what it was in 1947, we find upon

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and actual rights to values and metals, as well as changes of holders of rights and obligations.

"Article 4

"Permission must be had for transactions described in Articles 1 and 2 of this Law according to foreign exchange regulations.

"Article 5

"It is forbidden to conclude business in the country the amount of which in domestic currency is tied to gold or some foreign currency. * * *

"Article 6

"(1) The Federal Minister of Finance as the supreme foreign exchange authority, exercises his control over foreign exchange through: [various agencies] * * *

"(2) The Federal Minister of Finance regulates the limits of jurisdiction as between the foreign exchange authorities in regard to the exercising of foreign exchange control, be it by Regulations from Article 25 of this Law, or by separate decisions.

"Article 7

"(1) Transactions, subject to foreign exchange control according to this Law, may be conducted only by persons and establishments authorized to do so by the competent foreign exchange au-

examination little change in substance or legal effect wrought by the amendments made since 1947. Because of defendants' failure to supply the record with copies of the amendments, showing when made or other evidence of like character, we feel justified in assuming that the 1945 Exchange Law remained in effect during December, 1953. *Rusk* v. *Montgomery*, 80 Or 93, 101, 156 P 435; *Weygandt* v. *Bartle*, 88 Or 310, 317, 171 P 587; 31 CJS 744, Evidence 124(4). See, also, *State ex rel. Grismer* v. *Merger Mines Corp.*, 3 Wash2d 417, 101 P2d 308, 310, where the rule is

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thorities, unless the conduct of such business is permitted by the foreign exchange rules themselves.

"Article 8

"The National Bank, whenever authorized by the Federal Minister of Finance, may at any time request the holders in the country to offer for sale to the National Bank all their foreign exchange (regardless whether it be in the shape of claims in foreign currency, checks, drafts, etc.), foreign currency, foreign values and precious metals. If the National Bank decides to buy, it shall fix the terms, • • •

Article 12

"(1) The term 'devisa' as used in the foreign exchange regulations means a claim abroad on whatever basis, in whatever currency, regardless of the manner of disposal • • •

"Article 13

"(1) The term *foreigners* as used in this Law means all persons and corporations with permanent residence or seat abroad, regardless of citizenship of persons and ownership of enterprises.

"(2) The term *domestic persons* means all persons and corporations with permanent residence or seat within the country, regardless of citizenship of persons and ownership of enterprises. • • •

"Article 16

"(1) The penalties for foreign exchange infractions are: • • •

"2. Confiscation of objects or values constituting the foreign exchange infraction, in full or in part. • • •

"(2) The Federal Minister of Finance shall pronounce penalties.

"Article 25

"The Federal Minister of Finance shall issue more detailed rules, regulations and decisions for the execution of this Law, upon consulting the National Bank. • • • "

applied to the law of a foreign jurisdiction; *Martinez* v. *Gutierrez* (Tex), 66 SW2d 678; 31 CJS, supra, at 769.

Subsections (a), (b) and (c) of Article 2 of the Law of 1945, and as it was in 1946, single out the following transactions as the primary subjects of control:

> "Primarily the following transactions are subject to control:
>
> "(a) All transactions within the country and with foreign countries: in foreign exchange, claims and debts in foreign currency and other values in foreign currency;
>
> "(b) All transactions with foreign countries: in domestic currency, credits and debits in domestic currency and other values in domestic currency;
>
> [fol. 140] "(c) All transactions with foreigners within the country, causing changes in property relations between our country and foreign countries; and * * *."

The changes between Articles 1 and 2 of the Law of 1945 and as the same numbered articles appear in Exhibit 30 are immaterial.

In re Arbulich, to which we have made several previous references (decided May 26, 1953), is one of especial force and significance here. It was a proceeding to determine heirship in the estate of a California decedent which was claimed by a brother residing in the United States and by another brother who resided in and was a national of Yugoslavia. The decedent and the brother residing in California were former nationals of that country. The Superior Court entered a judgment to the effect that the brother residing in the United States was entitled to distribution of the entire estate. The Yugoslavian brother appealed. The Supreme Court held that evidence was sufficient to support the finding that on March 21, 1947, when decedent died, the rights of inheritance prescribed by § 259 of the California Probate Code did not exist with respect to either real or personal property as between the residents and citizens of the United States and Yugoslavia. Among other documents of importance before the court was the Foreign Exchange Law which we now review.

The court took notice of the amendments made to the 1945 Law in October, 1946, referring particularly to Article 24, as so amended (257 P2d at 439), saying:

> "The second decree, effective October 25, 1946, confirms the decree of September 7, 1945, and amends it in various respects which appear to be largely immaterial here. However, Article 24 of the second decree [fol. 141] [i.e., October, 1946], provides that 'The Minister of Finance of FPRY is herewith authorized to issue regulations, instructions, orders and decrees, for the execution of this law,' * * *."

We, therefore, feel warranted in saying that Article 24, as thus referred to in Arbulich, is identical with Article 24 as found in Exhibit 30 of the instant matter and the slight differences appearing may be credited to differences in translation. This justifies our conclusion that Article 24, as above quoted in Arbulich, was an integral and important element of the Law in December, 1953.

The court, continuing, stated:

> "Appellant urges that the 'Foreign Exchange Law' has no materiality in relation to the question of reciprocity; that it is merely 'regulatory of foreign exchange and has no reference whatever to rights of inheritance.' But a reading of the entire substance of the documents mentioned makes it apparent that the trial court was justified in reaching the conclusion that under Yugoslav law a citizen of the United States, at the time of decedent's death, had no definitely ascertainable and enforceable right to *receive* Yugoslav property by testament, and that the receipt of any such property would depend in each case upon the largely, if not entirely, uncontrolled discretion of the Minister of Finance. This is far different from a standardized regulation which might merely delay the transmission of gold, money, or other stores of value from one nation to another. * * *" (257 P2d at 439)

We also say, as did the California court, the Law has the effect of "confirming the apparently unlimited power of the

Minister of Finance over foreign exchange transactions" [fol. 14] and the absence of any "definitely ascertainable and enforceable right to *receive* Yugoslav property by testament, and that the receipt of any such property would depend in each case upon the largely, if not entirely, uncontrolled discretion of the Minister of Finance."

The rules authorized by Article 25 of the Law for the implementation of the regulation of foreign payments (hereinafter referred to as the Rules) are found in Exhibit 31. They capture and intensify the absolute control of foreign exchange which the Law reposes in the Minister of Finance. This is illustrated by pertinent parts included in marginal footnote.[5]

The record is replete with evidence of remittances from estates in Yugoslavia to persons in the United States and [fol. 143] the testimony of Yugoslavian consular representatives and experts called by the defendants concerning the

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[5] "Foreign Exchange Regulations

"Article 1

"Foreign exchange operations can be pursued only in accordance with the foreign exchange regulations, as well as authorization and permits delivered on the basis of the said regulations.

"Article 2

"1. The export of any means of payment and securities both in domestic and foreign currency, in any form (effective currency, foreign exchange, securities, coupons, etc.), both directly or indirectly (through other persons, the postoffice, etc.) *is not allowed without the permission of the competent foreign exchange authorities*, issued in conformity with the foreign exchange regulations. The export is exceptionally allowed in cases which are regulated in general, by the foreign exchange regulations (for instance, in passenger traffic).

"2. From foreign exchange regulations are exempted all exports of values enumerated in the present Article, effected by the Federal Ministry of Finance and the National Bank.

• • • • •

"Article 12

"1. Foreign exchange operations may be pursued exclusively on the basis of permits issued by the competent foreign exchange authorities, if these operations are not allowed by the foreign exchange regulations themselves.

• • • • •

"3. Likewise, all claims abroad which are not specifically mentioned in the foreign exchange regulations can be settled only after

movement of such funds, all offered as proof that American citizens have in the past received their legacies by delivery in the United States. This phase of the case is further amplified by self-serving declarations of the same tenor from Yugoslavian diplomatic representatives to the State Department and documents emanating from officials in that country. Much of this is immaterial, having dates subsequent to December, 1953, or lacking of any identifying dates; some are deficient in other respects which are unnecessary to note because we are compelled to reject all evidence of this character as legally inconclusive of the problem we now have under consideration. Moreover, the testimony of the Yugoslavian officials, including the diplomatic correspondence referred to, serves at most to create a conflict in the evidence as to the ultimate fact of whether or not there exists as a *matter of law an unqualified and enforceable right to receive* as defined by ORS 111.070, supra. Nor is this answered by evidence that some American citizens have enjoyed the "right to receive" the proceeds of their respective inheritances in whole or in part. The real test is whether *all* American citizens under the law of Yugoslavia can demand and enforce that right under the law in contradistinction to a dependency upon the good will or gracious indulgence of some official of that country.

Even if it can be said these items of evidence do reveal a flow of exchange from Yugoslavia to American heirs as of December, 1953, they, at the most, only attest the indulgence of the Yugoslavian authorities as to the American heirs as of that time. Certainly, as discretionary acts, per- [fol. 144] missible under the Law, they do not evidence the presence of an unqualified and enforceable right to receive by delivery of funds in the United States to citizens thereof

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the permission of the Banking and Currency Department of the Federal Ministry of Finance has been obtained.

"Article 13

* * * * *

"3. Foreign exchange operations depending on the authorization of foreign exchange authorities can be pursued exclusively by the persons to whom these permits have been issued on the basis of original permits." (Emphasis ours.)

under the foreign exchange laws and regulations of that country in 1953. The fact that some American citizens were so favored does not preclude wonderment as to how many may have been denied "the right to receive" or, indeed, whether those who did receive moneys by exchange, received all or only part thereof. This line of evidence has many of the characteristics noted by Mr. Justice Brand in the Krachler case, supra (199 Or at 499-502). What was done yesterday "as a matter of course" in the exercise of powers of discretion may not be the rule or custom of tomorrow. *State Land Board* v. *Rogers*, supra (247 P2d at 63).

Unless the area of alien succession over which the state of Oregon seeks to control through ORS 111.070, supra, has been preempted by some treaty agreement subsisting between Yugoslavia and the United States as of December, 1953, we are of the opinion that both the Yugoslavian Foreign Exchange Laws and Regulations extant as of that date operate as a denial of the claims of the defendants.

We are mindful that rights of succession to property under local law may be affected by an overriding federal policy when a treaty makes different or conflicting arrangements. In such event, the state policy must give way. *Clark* v. *Allen*, 331 US 503, 517, 91 L ed 1633, 1645, 67 S Ct. 1431.

By way of circumventing the adverse effect of the Yugoslavian Law and Regulations, the defendants place great reliance upon their interpretation of Article II of the Convention for Facilitating and Developing Commercial [fol. 145] Relations (sometimes called the Convention of Commerce and Navigation and by us hereinafter called the Treaty of 1881) as concluded on October 2/14, 1881, between the United States of America and Serbia (now a constituent part of Yugoslavia[6] (22 Stat 963, Treaty series 319). It is before us at Exhibit 9.

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[6] Its present and continuing effectiveness is attested by The Settlement of Pecuniary Claims Against Yugoslavia Agreement between the United States of America and that country of July 19, 1948 (Exhibit 7 herein), as is confirmed by Article 5, reading:

"The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquir-

Article II of the Treaty of 1881 reads:

"In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

"Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

"They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state."

[fol. 146] Proceeding on the theory that Article II of the Treaty of 1881 embraces the "right to receive," as well as the "right to take," the respondents rely on Article 8 of the Law, supra, offered by them as Exhibit 28 as an exception to the operation of the Foreign Exchange Law in so far as the "provisions of agreements with foreign countries are concerned with payment." The provisions of Article 8 of the current Law as reflected by that exhibit read:

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ing assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881."

> "The term 'foreign exchange regulations' refers to the provisions of the present Law, to the provisions of the Rules for the implementation of the present Law, to the orders, instructions and decisions of the Ministry of Finance of the FPR of Yugoslavia, made on the basis of the present Law, to all the regulations relating to the control of imports and exports enacted by the Minister of Foreign Trade of the FPR of Yugoslavia, as well as to the provisions of agreements with foreign countries which are concerned with payments."

As we have previously observed, at pages 438 and 439 of *In re Arbulich's Estate*, supra, there is spread with great detail the Yugoslavian Foreign Exchange Law as it was at that time. Comparing Article 8 of the Law as it was then with the current Article 8 of the same Law indicates some amendments since 1947. But when? Was Article 8, as above quoted, in effect in December, 1953, or was it so enacted subsequent to that time? Although pressed by counsel for the state, the defendants' witness Temer, the Consul General of the Yugoslavian Consulate at San Francisco, was unable to say whether the current Article 8 of the Law was effective in December, 1953.

Assuming arguendo that the current Article 8 of the Law was prevailing in December, 1953, we find no difficulty in concluding that it gives some recognition to the provi- [fol. 147] sions of Article II of the Treaty of 1881. But it is only to the extent that Article II has any impact upon the "right to receive" as defined by ORS 111.070, supra, would the later Article 8 become a matter of interest. We think, notwithstanding what may be the date of its enactment, that it has no bearing on our present problem.

Clark v. *Allen*, supra, decided June 9, 1947, becomes a holding of prime interest in this matter in that it was precipitated by a proceeding initiated under § 259, California Probate Code as it was in 1942. It will be remembered that section bears upon the rights of aliens not residing in the United States to take real or personal property in the state of California.[7] And for the further reason that it

[7] Sections 259 and 259.2 of the California Code, supra, are identical with ORS 111.070 (1) (a) and (b) and subsection (3).

construes a treaty provision similar to Article II of the Treaty of 1881.

In the Clark case, Alvina Wagner, a resident of California, died in 1942. She left real and personal property situate in that state. By a will, dated December 23, 1941, she bequeathed her entire estate to four relatives who were nationals and residents of Germany. Six heirs at law, who were residents of California, filed a petition for determination of heirship in the probate proceeding, claiming that the German nationals were ineligible as legatees under §259, supra, of the California Probate Code. It appears that at the time of the decision in Clark, there had never been a hearing on that petition. This, for the reason that in 1943 the Alien Property Custodian vested in himself all right, title and interest of the German nationals in Mrs. Wagner's estate. The Property Custodian thereupon in- [fol. 148] stituted an action in the U. S. District Court against the executor under the will and the California heirs at law for a determination that the California heirs had no interest in the estate and that he was entitled to the entire net estate upon the conclusion of the administration. The District Court granted judgment for the Custodian on the pleadings (52 F Sup 850). The Circuit Court of Appeals reversed, holding that the District Court was without jurisdiction of the subject matter (147 F2d 136). The case went thence to the Supreme Court on certiorari where it was held that the District Court had jurisdiction of the suit and remanded the cause to the Circuit Court of Appeals (9th CC) for consideration on the merits (326 US 490). The Circuit Court of Appeals thereafter held for the California heirs (156 F2d 653). The case was returned again to the Supreme Court on a petition for a writ of certiorari which was granted on the ground that the issues raised were of national importance.

The defendants concede that the Clark case over the years has, since its pronouncement in 1947, come to be regarded as "the cornerstone of the entire reciprocal inheritance rights structure as it was the first major decision by a court of last resort on the California reciprocity statute."

In *Clark v. Allen*, supra, the court was called upon to construe Article IV of the Treaty of Friendship, Commerce

and Consular Rights made with Germany December 8, 1923 (44 Stat 2132). It had different provisions relating to the testamentary disposition of realty and personalty. Article IV of the Treaty, which is the provision of our interest, contained the following provisions as to the disposition of personalty:

> "*Nationals of either High Contracting Party* may [fol. 149] have full power to dispose of their personal property of every kind *within the territories of the other*, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the *nationals of the High Contracting Party within whose territories* such property may be or belong shall be liable to pay in like cases." (Emphasis ours.) (91 L ed at 1644)

We are of the opinion that the following words and phrases found in the German Treaty of 1923: "Nationals of either High Contracting Party, * * * within the territories of the other" are of the same import and meaning as the words and phrases found in Article II of the Treaty of 1881; that is, "citizens of the United States in Serbia and Serbian subjects in the United States," a phrasing which the defendants ascribe to Victorian English.

In the Clark case, it was held that the language of Article IV of the German Treaty applied only to nationals of either of the party nations who were *within* the territory of the other. Mr. Justice Douglas speaking for the court, says at p 1644 L ed:

> "* * * In case of personalty, the provision governs the right of 'nationals' of either contracting party to dispose of their property within the territory of the 'other' contracting party; and it is 'such personal property' that the 'heirs, legatees and donees' are entitled to take.

"Petitioner, however, presents a detailed account of the history of the clause which was not before the Court in Frederickson v. Louisiana, 23 How (US) 445, 16 L ed 577, supra, and which bears out the construction [fol. 150] that it grants the foreign heir the right to succeed to his inheritance or the proceeds thereof. But we do not stop to review that history. For the consistent judicial construction of the language since 1860 has given it a character which the treaty-making agencies have not seen fit to alter. And that construction is entirely consistent with the plain language of the treaty. We therefore do not deem it appropriate to change that construction at this late date, even though as an original matter the other view might have much to commend it.

"We accordingly hold that Article IV of the treaty does not cover personalty located in this country and which an American citizen undertakes to leave to German nationals. * * * *"

The Supreme Court of California also had before it the provisions of Article II of the Treaty of 1881 in the Arbulich case, supra, which were there urged, as here, as applicable and controlling in favor of the appellant brother. Concerning this, Mr. Justice Schauer, who spoke for the court, stated:

"Appellant contends, nevertheless, that the provisions of Article II of a treaty entered into in 1881 between the United States and the Kingdom of Serbia, 22 Stat. 964 (of which the present Republic of Yugoslavia is the successor government) and certified by the Secretary of State of the United States as remaining in full force and effect between this country and Yugoslavia, are applicable and controlling in appellant's favor on the issue of reciprocity. It may be noted that the first paragraph of Article II seemingly treats only of 'citizens of the United States in Serbia [Yugoslavia] and Serbian [Yugoslav] subjects in the United States,' rather than, as is the situation in the present case, of a United States citizen who dies in

the United States and leaves property to a Yugoslav subject who is *in Yugoslavia*, and therefore is not here [fol. 151] applicable. Even if we assume its applicability in that respect, however, the rights granted are only those given by each of the contracting nations 'to the subjects of the most favored nation,' and do not purport to equal the rights given or guaranteed by each of the contracting nations to *its own* citizens. Consequently the treaty provisions do not establish the reciprocal rights required by the Probate Code." (257 P2d at 437)

In that holding, we find the California court, and we think rightly, following the pattern of interpretation accorded the German treaty before the United States Supreme Court six years before in *Clark* v. *Allen*, supra. We take notice that a writ of certiorari in Arbulich was denied by the Supreme Court of the United States (345 US 897, 98 L ed 398, 74 S Ct 219) and later a petition for leave to file a petition for rehearing was also denied (347 US 908, 98 L ed 1066, 74 S Ct 426).

If we correctly appraise the position of defendants, they would, notwithstanding the doctrine of *Clark* v. *Allen*, supra, have us interpret the words "in Serbia" and "in the United States," as they appear in Article II of the Treaty of 1881, as referring to the place where property rights are granted rather than to the geographical location of the person claiming them. If thus construed the provision would accord to the nationals of either party wherever resident rights similar to those enjoyed by nationals of the most favored nation wherever resident. But this we decline to do, being impressed that the construction given to the German Treaty in the Clark case applies with equal force to the Serbian Treaty of 1881, and as also held in Arbulich's Estate.

At the time of *In re Arbulich*, as well as in 1953, the [fol. 152] California state code (see § 259 California Probate Code) carried no provision comparable to subsection (3) of § 1 of ORS 111.070, requiring, as does the Oregon statute, the right "to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country." The

right to receive as discussed by the court in Arbulich, was without the mandatory direction of the California act or that it be a receipt by delivery in the United States. In this respect, the Oregon act is much more stringent than the provisions of the California Probate Code or similar codes that have come to our attention. It is a difference which may well account for the ruling of the Los Angeles Superior Court of California in *Miloglav's Estate*, No. 301394, May 5, 1954, and which comes to our notice via defendants' Appendix F.

We are not informed as to the reasons which prompted the reenactment of subsection (b) of § (1) of ORS 111.070 in 1951, and as it was in § 61-107, OCLA, nor the new provision, subsection (c), of the same section of the present act relating to assurances that foreign beneficiaries of an Oregon estate receive the avails of their shares without confiscation by the government of the country in which said beneficiaries resided. But whatever was the legislative purpose, whether to circumvent then known practices of certain governments by way of diminishing or confiscating inheritances received by some of their citizens from Oregon estates or in barring the free movement of foreign inheritances to Oregon beneficiaries, we think it was clearly within the legislative province to prescribe the various conditions found in ORS 111.070. The protective solicitude by our legislature demonstrated by the provisions of ORS [fol. 153] 111.070 in behalf of Oregon citizens is extended to alien heirs residing in foreign countries who inherit in Oregon. In short, the net result when observed, at least on the part of the state of Oregon, brings ORS 111.070 more in harmony with the spirit of the international agreements as contended for by defendants than their interpretation of those treaties demand. In effect, subsections (b) and (c) of § (1) of that statute place local heirs and alien heirs on a parity by insuring to each the full measure of their respective inheritances. We deem both of these conditions a reasonable exercise of legislative power, and in no sense trespassing upon any international treaty or agreement brought to our attention, but to the contrary implementing the spirit, if not the letter, of such accords.

In arriving at our conclusions, we have given attention to the terms of what is commonly known as the Bretton Woods Agreement of 1944, cited by the defendants. Yugoslavia was one of the 44 participating governments at the United Nations Monetary and Financial Conference of that year. Later, it became one of the signatories to the Articles of Agreement formulated as the final act of the conference. The major features of the final document provided for establishment of the International Monetary Fund and of the International Bank for Reconstruction and Development. It is common knowledge that the conference was motivated by the then prevailing international apprehension world economy would suffer seriously as an aftermath of World War II unless some devices to stabilize it were quickly undertaken by the world powers. This thought is clearly affirmed by Article I of that agreement, wherein its controlling purposes and objectives are stated.

The defendants, however, point to its Art XIV, § 4 and [fol. 154] Art XI, § 2, which provide sanctions against any member nation which imposes foreign exchange restrictions contrary to the provisions of the agreement. Although not fully developed by defendants' argument, the inference is that a foreign exchange system of controls and regulations was established thereby which would nullify the restrictive character of the Yugoslav Foreign Exchange Law and implementing Regulations. The contrary is clearly evident from a reading of the entire agreement. It is replete with expressions recognizing the want of economic parity between the signing nations and the relative difficulties of some of the lesser nations in maintaining a sound monetary system, and definitely places them in an exceptional class. We turn for the moment to one of the very articles to which they point. It is significantly captioned "Transitional Period." Section 2 of that article is subcaptioned "Exchange Restrictions." Its provisions are spread in marginal note.*

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* "In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however,

Article VII, § 3(b) of the agreement is also to the same tenor in recognizing that some nations will find the need to "impose limitations on the freedom of exchange operations."

The Bretton Woods Agreement gives no support to the thesis of defendants and, to the contrary, is in a large sense [fol. 155] on international recognition that some countries, rightly or wrongly, would impose strictures such as are exemplified by the foreign exchange laws of Yugoslavia and Bulgaria (see *State Land Board v. Rogers*, supra).

By way of weakening or equivocating the applicability of *Clark v. Allen*, supra, we are cited the opinions of the California Attorney General, dated July 15, 1942, listing foreign nations of that time with whom the Attorney General deemed reciprocal inheritance rights existed by reason of treaties. This listing included Yugoslavia. Notwithstanding that such compilation was then made by the now Chief Justice of the United States, its persuasive value as to that nation was nullified 11 years later by *In re Arbulich's Estate* (1953). They also rely upon an opinion of the Oregon Attorney General given in 1938 (19 Op Atty Gen 136) to the same effect. But we are informed by the State's brief in this matter that this opinion has been abandoned by that office since the holding of *Clark v. Allen*, supra, in 1947.

Much of defendants' argument rests upon the mistaken premise that "the right to receive," which is the sole right to which we give attention in this matter, is reciprocal in character. This is contrary to the conclusion of *State Land Board v. Rogers*, supra. It is only "the right to take" that demands reciprocal legislation in a foreign country. This is but another reason why we do not find the provisions of

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have continuous regard in their foreign exchange policies to the purposes of the fund; and, *as soon as conditions permit*, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund." (Emphasis ours.)

ORS 111.070 impinging upon any treaty existing between the United States and Yugoslavia.

During the course of the oral argument, counsel for the defendants laid great stress upon two diplomatic notes exchanged by the State Department and the Embassy of [fol. 156] Yugoslavia. We were there led to believe that their net result was equivalent to a bilateral modification of the Treaty of 1881, giving to it a construction contrary to the doctrines as expressed in *Clark* v. *Allen*, supra, and *In re Arbulich's Estate*, supra.

This exchange was had in April, 1958, and hence not a part of the record of the trial court when it entered its decree in this matter in April, 1957. The defendants bring these notes to our attention via the filing of a supplemental brief. We pass the question of the propriety of bringing matters of that kind to this court under the circumstances, but observe they do not have the force and effect claimed for them even if they were ever properly made a part of the record. This is made patently manifest by the concluding paragraph of the note from the State Department in response to the query from the Yugoslavian Embassy, where it stated:

> "This note, of course, is not to be considered as having the character of an international agreement or as effecting any modification of the treaty [The Treaty of 1881]."

We hold that the provisions of ORS 111.070 relating to the right of American citizens to receive a foreign inheritance by delivery in the United States or its territories, does not do violence to any treaty subsisting between this country and Yugoslavia in December, 1953. We also hold that the Yugoslavian Foreign Exchange Law and Foreign Exchange Regulations enacted pursuant thereto as they were as of that date negative the concept of an unqualified and enforceable right to receive delivery of Yugoslavian inheritance in this country by an American citizen, but to [fol. 157] the contrary make its receipt dependent upon the grace or sufferance of a Yugoslavian authority.

These conclusions make it unnecessary for us to give consideration to the claim of the defendants concerning the

right of American citizens to take or inherit under Yugoslavian law or the sufficiency of the proof relating to the right of Yugoslavian citizens to receive an American inheritance without diminution by the government of that country. The failure to prove the legal existence of any one of the three conditions required by ORS 111.070 defeats the claims of succession to an Oregon inheritance.

The decree is reversed. Each party will pay own costs.

[fol. 158]

IN THE SUPREME COURT OF OREGON

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—March 1, 1960

The Court having duly considered respondents' petition for rehearing, and the Court being fully advised thereon,

It Hereby Is Ordered that such petition be and the same hereby is denied.

[fol. 159]

IN THE SUPREME COURT OF OREGON

Appeal From Multnomah County

In the Matter of the Estate of Joe Stoich, deceased.

STATE OF OREGON, acting by and through the State Land Board, Appellant,

v.

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA TURK, JOSIP BELGAN, JURE ZIVANOVIC, MARA TOLIC and MILAN STOJIC, and also BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, Respondents.

DECREE—January 13, 1960

This cause on December 16, 1959, having been duly argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for

further consideration, and the Court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is error as alleged.

It Therefore Is Considered, Ordered and Decreed that the decree of the court below rendered and entered in this cause be and the same is in all things reversed and set aside.

It Further Is Ordered that each party pay his own costs in this Court.

It Further Is Ordered that this cause be remanded to the court below from which the appeal was taken with directions to take further proceedings in conformity with the opinion of the Court herein and in accordance therewith.

[fol. 160]

IN THE SUPREME COURT OF OREGON

Appeal From Multnomah County

In the Matter of the Estate of Muharem Zekich, deceased.

STATE OF OREGON, acting by and through the State Land Board, Appellant,

v.

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC, MURTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and RAJKA ZEKIC, and BRANKO KARDZOLE, Consul General of Yugoslavia at San Francisco, California, Respondents.

DECREE—January 13, 1960

This cause on December 16, 1959, having been duly argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for further consideration, and the Court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is error as alleged.

It Therefore Is Considered, Ordered and Decreed that the decree of the court below rendered and entered in this cause be and the same is in all things reversed and set aside.

It Further Is Ordered that each party pay his own costs in this Court.

It Further Is Ordered that this cause be remanded to the court below from which the appeal was taken with directions to take further proceedings in conformity with the opinion of the Court herein and in accordance therewith.

[fol. 160a] Clerk's Certificate (omitted in printing).

[fol. 161]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 10, 1960.

The petition herein for a writ of certiorari to the Supreme Court of the State of Oregon is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.